FIFTIETH ANNIVERSARY
OF THE
CONSTITUTION OF IOWA

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THE FIFTIETH ANNIVERSARY OF THE CONSTITUTION OF IOWA 1857-1907

Truly Yours
Peter A. Dey

PROCEEDINGS

OF THE

FIFTIETH ANNIVERSARY

OF

THE CONSTITUTION OF IOWA

HELD UNDER THE AUSPICES OF

THE STATE HISTORICAL SOCIETY OF IOWA

EDITED BY

BENJAMIN F. SHAMBAUGH

PUBLISHED AT IOWA CITY IOWA IN 1907 BY
THE STATE HISTORICAL SOCIETY OF IOWA

1907

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IA

EDITOR'S PREFACE

The commemoration of the Fiftieth Anniversary of the Constitution which was adopted by the people of Iowa in 1857 was in itself a notable event. It has become a part of the history of our Commonwealth. The program, which was presented under the auspices of The State Historical Society of Iowa on the nineteenth, twentieth, twenty-first, and twenty-second of March, 1907, at Iowa City, Iowa, in the Hall of Liberal Arts, was carried out fully in every detail.

It was during the sessions of the Constitutional Convention of 1857 that The State Historical Society of Iowa was organized at Iowa City. And so the Society incidentally commemorated its own fiftieth anniversary in presenting the program for the Fiftieth Anniversary of the Constitution of 1857. A brief history of The State Historical Society is given in Appendix B.

In Part I of this volume the history of the Fiftieth Anniversary of the Constitution of 1857

is given in documentary rather than in narrative form. This plan of presentation was adopted in order to preserve something of the form and spirit as well as the facts of the Anniversary.

BENJ. F. SHAMBAUGH

OFFICE OF THE SUPERINTENDENT AND EDITOR
THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY 1907

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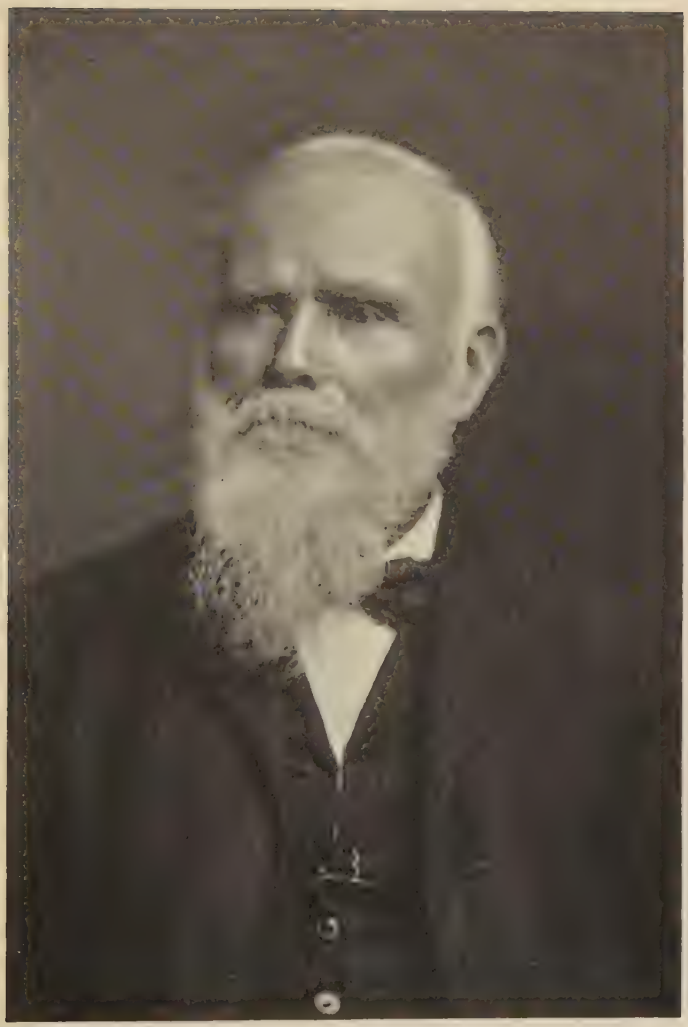
SURVIVING MEMBERS OF THE CONSTITUTIONAL CONVENTIONS



PART I

HISTORY OF THE FIFTIETH ANNIVERSARY OF THE CONSTITUTION OF IOWA

A HISTORY OF THE FIFTIETH ANNIVERSARY

The Initial Step

At a special meeting of the Board of Curators of The State Historical Society of Iowa, held in the Hall of Liberal Arts on March 20, 1906, President Peter A. Dey was authorized to appoint a committee, with Curator Benj. F. Shambaugh as Chairman, to formulate plans for a program commemorative of the Fiftieth Anniversary of the Constitution of Iowa. It was, moreover, contemplated that such a program, presented under the auspices of The State Historical Society, should incidentally commemorate the founding of the Society which took place at Iowa City in the year 1857.

Ways and Means

In line with the action of the Board of Curators the following correspondence took place between the Chairman of the committee of the Board of Curators and Mr. F. F. Jones, a

member of the House of Representatives of the Thirty-first General Assembly: —

Iowa City, Iowa,
March 22, 1906.

Dear Mr. JONES:

Through Senator Lambert I learned the fate of House File No. 291 relating to an appropriation for the Historical Society. [1]

We fall by the wayside.

As a result of the defeat of the Historical Society bill I am a little worried about the outcome of a movement on the part of the Historical Society for the commemoration in January or February, 1907, of the fiftieth anniversary of the formation and adoption of the Constitution of Iowa. The Society believes that a celebration should be arranged for commemorating the formation of the present Constitution of Iowa at Iowa City a half century ago. The Constitutional Convention met at Iowa City in the Old Stone Capitol from January 19 to March 5, 1857. Thus the celebration should probably be held sometime between January 19 and March 5, 1907. Furthermore, such celebration should be State-wide and should be given the largest possible public recognition. If we have any pride in our State history we ought not to allow the year 1907 to pass without a proper recognition of the great event of the adoption of the Constitution in 1857. In 1896 the Twenty-sixth General Assembly of Iowa appropriated $10,000 for the celebration of the fiftieth anniversary of the admission

[1] This bill, which provided for an increase in the appropriations for The State Historical Society of Iowa, was killed in the House Committee on Appropriations.

of Iowa into the Union.[1] This celebration was held at Burlington.

The failure of the Historical Society bill jeopardizes somewhat the prospect of the commemorative celebration contemplated by the Historical Society next year. It has, however, occurred to me that (notwithstanding the lateness of the hour) the present General Assembly might be willing to make an appropriation of $1,500 to meet the proper and legitimate expenses of holding a semi-centennial anniversary celebration of the adoption of the Constitution of Iowa next year. In making the appropriation no provision need be made for any commission or for the expenses of such commission; for the Board of Curators of The State Historical Society would be glad to serve without compensation, and The State Historical Society would afford the proper organization and machinery for making all arrangements in carrying out the anniversary exercises. Thus there would be no need of such a large appropriation as the $10,000 sum set aside in 1896 for the commemoration of the admission of Iowa into the Union. In view of the fact that the machinery of the Historical Society could be used in carrying out the project, $1,500 would, I believe, be sufficient to meet the necessary expenses of (1) printing and postage, (2) traveling expenses incurred by men of note who will take part in the program, (3) the expense incurred in securing the attendance of surviving members of the Constitutional Convention of 1857, and (4) the publication of a commemorative pamphlet or volume containing the proceedings of the anniversary celebration.

In short, if the General Assembly would appropriate $1,500 to be expended under the direction of the Board of

[1] *Laws of Iowa*, 1896, p. 119.

Curators of The State Historical Society of Iowa, a fitting semi-centennial anniversary of the Constitution of Iowa could be provided for. I believe that the project would meet with cordial and hearty response from all parts of the State.

I presume that it is too late to introduce an appropriation bill at this time; but I am under the impression that an appropriation bill could originate with the Committee on Appropriations. If the above suggestions interest you I wish you might inquire into the possibility of securing the appropriation herein suggested.

Very cordially yours,

BENJ. F. SHAMBAUGH

Hon. F. F. JONES,
House of Representatives,
Des Moines, Iowa.

Des Moines, Iowa, March 24, 1906.

BENJ. F. SHAMBAUGH,
Iowa City, Iowa.

My Dear SHAMBAUGH:

I have yours of March 22nd, and have read very carefully your suggestions as to an appropriation to defray the expenses of a semi-centennial celebration of the adoption of the Constitution of Iowa next year. I have conferred with several members of our appropriations committee and think there is a working chance to get such a measure reported out by the House Committee.[1] I have not been able to see Senator Garst[2] in regard to the matter

[1] Mr. Jones was a member of the House Committee on Appropriations.

[2] Senator Warren Garst was Chairman of the Senate Committee on Appropriations.

as yet. If he will agree to the plan I will undertake to get the matter through.

The fact is, we have already appropriated more money than the limit set by the authorities and it is extremely hard to interest the committees in any appropriation not absolutely necessary. No bill can be reported to the House carrying appropriations except by the Appropriation Committee. I probably will be able to write you further in regard to the matter next week.

With kind personal regards, I am,

Very truly yours,

F. F. Jones.

Des Moines, Iowa,
March 28, 1906.

Benj. F. Shambaugh,
Iowa City, Iowa.

My Dear Shambaugh:

I have been at work on the proposition to make an appropriation for the celebration at Iowa City. The very best I can do is to secure a promise of $750 which will be put in the Omnibus Bill. As I have this arrangement made with the Chairmen of the Senate and House Committees, I think there is little doubt that this can be secured if satisfactory to you. If more is absolutely necessary I think that the next session could be depended upon to help you out in the matter. I would be pleased to know your wishes in regard to this matter.

Very truly yours,

F. F. Jones.

Iowa City, Iowa, March 29, 1906.

My Dear Mr. JONES:

Replying to your letter of March 28th.

The proposition to make provision for an appropriation of $750 in the Omnibus Bill for a celebration commemorative of the semi-centennial anniversary of the Constitution of Iowa will be altogether satisfactory. This arrangement, let me add, will be satisfactory because just as soon as the appropriation is made I will begin to raise by private subscription a fund to supplement the $750 appropriation by the State. I feel confident that with the encouragement which will come from an appropriation of $750 I will be able to raise an additional fund from private subscriptions necessary to carry out our plans. At the outset I had not thought of private subscriptions, but I believe the plan is feasible. [1]

It is hardly necessary for me to add that the prospect of securing $750 gives me no small pleasure. Your efforts in this matter will, I assure you, be highly appreciated by the Board of Curators and the members of the Historical Society throughout the State.

Please let me hear from you as soon as the Omnibus Bill has been acted upon. [2]

Very cordially yours,

BENJ. F. SHAMBAUGH

Hon. F. F. JONES,
House of Representatives,
Des Moines, Iowa.

[1] This plan was not carried out, the $750 being supplemented by allowances from the funds of The State Historical Society.

[2] The Chairman of the committee of the Board of Curators was informed by telephone of the success of the efforts of Mr. Jones.

LEGISLATION BY THE THIRTY-FIRST GENERAL ASSEMBLY

The success of the effort to secure a special appropriation for the purpose of defraying expenses connected with the commemoration of the Fiftieth Anniversary of the Constitution is seen in the following extract from the Acts of the Thirty-first General Assembly: —

AN ACT to make appropriations for the payment of state and judicial officers, state and other expenses. [1]

Be it enacted by the General Assembly of the State of Iowa:

. . . . . .

SEC. 46. SEMI-CENTENNIAL ANNIVERSARY. There is hereby appropriated out of any money in the treasury not otherwise appropriated the sum of seven hundred fifty dollars, to be expended under the direction of the board of curators of the state historical society, for the purpose of defraying the proper and legitimate expenses of holding at Iowa City, 1907, a semi-centennial anniversary celebration of the adoption of the constitution of Iowa, and publishing the proceedings thereof: provided that said board of curators are to serve without compensation and this appropriation not to be available before January 1st, 1907.

Approved April 6, A. D. 1906.

I hereby certify that the foregoing act was published in the Register and Leader and the Des Moines Daily Capital, April 7, 1906.

W. B. MARTIN,
Secretary of State.

[1] *Laws of Iowa*, 1906, p. 127.

The Committee on Program and Arrangements

At an adjourned meeting of the Board of Curators, held in the Hall of Liberal Arts on September 18, 1906, the Chairman of the original committee [1] on the Fiftieth Anniversary program asked to be retired and recommended that a new committee be appointed with Curator L. G. Weld as Chairman. This recommendation having been approved by the Board of Curators, President Peter A. Dey appointed Curators J. W. Rich and Benj. F. Shambaugh to serve with Curator L. G. Weld on the new Committee on Program and Arrangements.

The Preliminary Announcement

In the month of February a preliminary announcement of the Program as arranged by the Committee on Program and Arrangements was issued through the office of the Secretary of The State Historical Society.

[1] On this original committee the Chairman had acted alone, no additional members having been appointed.

[The Preliminary Announcement of the Program]

[Preliminary Announcement]

IN COMMEMORATION OF

THE FIFTIETH ANNIVERSARY

OF

THE CONSTITUTION OF IOWA

THERE WILL BE PRESENTED UNDER THE AUSPICES OF
THE STATE HISTORICAL SOCIETY OF IOWA
AT IOWA CITY IOWA

A PROGRAM

Tuesday March the Nineteenth
Wednesday March the Twentieth
Thursday March the Twenty-First
Friday March the Twenty-Second
Nineteen Hundred Seven

Tuesday March the Nineteenth

AN ADDRESS

ANDREW CUNNINGHAM McLAUGHLIN

Professor of History in the University of Chicago

Wednesday March the Twentieth

AN ADDRESS

EUGENE WAMBAUGH

Professor of Law in Harvard University

THURSDAY MARCH THE TWENTY-FIRST

AN ADDRESS

REUBEN GOLD THWAITES

SUPERINTENDENT OF THE STATE HISTORICAL SOCIETY OF WISCONSIN

FRIDAY MARCH THE TWENTY-SECOND

AN ADDRESS

EMLIN McCLAIN

JUSTICE OF THE SUPREME COURT OF IOWA

HONORARY PRESIDENTS

ALBERT B. CUMMINS
Governor of the State of Iowa

GEORGE E. MacLEAN
President of the State University of Iowa

PETER A. DEY
President of the State Historical Society of Iowa

Laenas G. Weld

Joseph W. Rich

Benj. F. Shambaugh
Committee on Program and Arrangements

[Printed Insert Accompanying the Preliminary Announcement]

THE CONSTITUTION OF IOWA
1857-1907

The Constitution of the State of Iowa was drafted by a Constitutional Convention which assembled in the Old Stone Capitol at Iowa City on the nineteenth of January, one thousand eight hundred and fifty-seven, and adjourned on the fifth of March, one thousand eight hundred and fifty-seven. At an election held on the third of August, one thousand eight hundred and fifty-seven, the Constitution was ratified by the people; and on the third of September, one thousand eight hundred and fifty-seven, it was declared by the Proclamation of Governor James W. Grimes to be the Supreme Law of the State of Iowa.

The Invitations

The Fiftieth Anniversary of the Constitution of Iowa being essentially a public function, the general public were invited to attend the exercises announced on the Program. In addition to the general invitation to the public about two thousand special invitations were issued through the office of the Secretary of The State Historical Society in accordance with the directions of the Committee on Program and Arrangements.

The only known surviving members of the three Constitutional Conventions (Mr. Samuel W. Durham, of the Convention of 1844, Mr. J. Scott Richman, of the Convention of 1846, and Mr. John H. Peters, of the Convention of 1857) were especially invited to be present at the Anniversary exercises as guests of honor of The State Historical Society.

[Special Invitation]

The Board of Curators
of
The State Historical Society of Iowa
requests the honor of your presence at the exercises
commemorative of the
Fiftieth Anniversary of the Constitution of Iowa
at Iowa City Iowa
on
Tuesday March the Nineteenth
Wednesday March the Twentieth
Thursday March the Twenty-first
Friday March the Twenty-second
Nineteen Hundred Seven

Reception by the President of the State University

Enclosed with each special invitation from the Board of Curators of The State Historical Society was an engraved invitation from the President of the State University of Iowa to a reception at his home. This reception was largely attended by the members, guests, and friends of The State Historical Society.

[President MacLean's Invitation]

The President of the State University of Iowa
requests the honor of the presence of

.....

to meet the officers of the
State Historical Society of Iowa
and the University Senate
at his home, 603 College Street
on Thursday afternoon, the twenty first of March
One thousand nine hundred and seven
at half after four o'clock

The Program

Accompanying the special invitation from the Board of Curators was a copy of the Program in full, printed on hand made paper. This Program was carried out fully in every detail.

[The Program as Printed in Full]

A PROGRAM

PRESENTED UNDER THE AUSPICES OF

THE STATE HISTORICAL SOCIETY OF IOWA

IN COMMEMORATION OF

THE FIFTIETH ANNIVERSARY

OF

THE CONSTITUTION OF IOWA

THE HALL OF LIBERAL ARTS IOWA CITY IOWA

TUESDAY MARCH THE NINETEENTH
WEDNESDAY MARCH THE TWENTIETH
THURSDAY MARCH THE TWENTY-FIRST
FRIDAY MARCH THE TWENTY-SECOND
NINETEEN HUNDRED SEVEN

TUESDAY MARCH THE NINETEENTH

BENJAMIN FRANKLIN SHAMBAUGH PRESIDING

AN ADDRESS 8.15 P. M.

A WRITTEN CONSTITUTION IN SOME OF ITS HISTORICAL ASPECTS

BY

ANDREW CUNNINGHAM McLAUGHLIN

PROFESSOR OF HISTORY IN THE UNIVERSITY OF CHICAGO

WEDNESDAY MARCH THE TWENTIETH

CHARLES NOBLE GREGORY PRESIDING

AN ADDRESS 8.15 P. M.

THE RELATION BETWEEN GENERAL HISTORY AND THE HISTORY OF LAW

BY

EUGENE WAMBAUGH

PROFESSOR OF LAW IN HARVARD UNIVERSITY

THURSDAY MARCH THE TWENTY-FIRST

A CONFERENCE 10.00 A. M.

THE TEACHING OF HISTORY

ISAAC ALTHAUS LOOS PRESIDING

A CONFERENCE 2.00 P. M.

THE WORK OF LOCAL HISTORICAL SOCIETIES

FRANK EDWARD HORACK PRESIDING

THURSDAY MARCH THE TWENTY-FIRST

PETER A. DEY PRESIDING

AN ADDRESS 8.15 P. M.

THE ROMANCE OF MISSISSIPPI VALLEY HISTORY

BY

REUBEN GOLD THWAITES

SUPERINTENDENT OF THE STATE HISTORICAL SOCIETY OF WISCONSIN

FRIDAY MARCH THE TWENTY-SECOND

GOVERNOR ALBERT BAIRD CUMMINS PRESIDING

AN ADDRESS 10.00 A. M.

THE CONSTITUTIONAL CONVENTION AND THE ISSUES BEFORE IT

BY

EMLIN McCLAIN

JUSTICE OF THE SUPREME COURT OF IOWA

LUNCHEON

AT THE BURKLEY IMPERIAL 1.00 P. M.

GEORGE EDWIN MACLEAN PRESIDING

BRIEF ADDRESSES BY GUESTS OF HONOR

HONORARY PRESIDENTS

ALBERT BAIRD CUMMINS
GOVERNOR OF THE STATE OF IOWA

GEORGE EDWIN MacLEAN
PRESIDENT OF THE STATE UNIVERSITY OF IOWA

PETER A. DEY
PRESIDENT OF THE STATE HISTORICAL SOCIETY OF IOWA

LAENAS GIFFORD WELD
JOSEPH WARFORD RICH
BENJAMIN FRANKLIN SHAMBAUGH
COMMITTEE ON PROGRAM AND ARRANGEMENTS

[Announcement of the Luncheon Accompanying the Invitations and Program]

ON FRIDAY MARCH THE TWENTY-SECOND AFTER THE MORNING PROGRAM LUNCHEON WILL BE SERVED AT THE BURKLEY AT 1:00 O'CLOCK. THOSE DESIRING PLATES RESERVED SHOULD SEND THEIR NAMES TO FRANK E. HORACK, SECRETARY OF THE STATE HISTORICAL SOCIETY OF IOWA, IOWA CITY, IOWA.

PLATES $1.50

A Souvenir of The State Historical Society

As a souvenir of the Fiftieth Anniversary of the Founding of The State Historical Society of Iowa there was issued early in February, 1907, a twenty-four page brochure entitled *A Brief History of The State Historical Society of Iowa.* The outer cover of this souvenir was embellished with the seal of The State Historical Society embossed in gold.

[Title Page of the Souvenir of The State Historical Society]

A BRIEF HISTORY

OF

THE STATE HISTORICAL SOCIETY OF IOWA

1857–1907

REPRINTED FROM THE IOWA JOURNAL OF HISTORY AND POLITICS FOR APRIL 1903 BY THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY IOWA 1907

A Souvenir of the Constitution of 1857

To those present at the Luncheon there were distributed copies of a pocket edition of *The Constitution of the State of Iowa Adopted in 1857*. This little book was beautifully bound in flexible leather covers.

[Title Page of the Souvenir of the Constitution of 1857]

THE CONSTITUTION OF THE STATE OF IOWA

ADOPTED IN 1857

WITH AN

HISTORICAL INTRODUCTION

BY

BENJAMIN F. SHAMBAUGH, A.M., PH.D.
Professor of Political Science in the
State University of Iowa

PUBLISHED BY
THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY IOWA
1907

A Souvenir of the Luncheon

The special favors at Luncheon, with which the Program of the Fiftieth Anniversary closed, were printed copies of the luncheon menu bound in an embossed cover. The print of the Old Stone Capitol was from a water color painting by Bertha M. H. Shambaugh.

[The Luncheon Menu]

THE FIFTIETH ANNIVERSARY

OF THE

CONSTITUTION OF IOWA

1857--1907

LUNCHEON AT THE BURKLEY IMPERIAL

FRIDAY, MARCH
THE TWENTY-SECOND
NINETEEN HUNDRED SEVEN

Menu

FRUIT CUP

BOUILLON OF CELERY

BAKED SHAD—CAVIAR SAUCE

SARATOGAS OLIVES

MIGNON FILET OF BEEF A LA ST. MAUR

CARNIVAL PUNCH

ROAST TURKEY—CRANBERRY JELLY

NEW POTATOES ASPARAGUS

MACEDONIAN NUT SALAD

ICE CREAM WITH STRAWBERRIES

CARAMEL CAKE

CHEESE AND WAFERS

COFFEE

Toasts

GEORGE EDWIN MACLEAN, PRESIDING

THE OLD STONE CAPITOL

THE BIRTH PLACE OF THE CONSTITUTION OF 1857

Social Hospitalities

In addition to the Reception given by President George E. MacLean of the State University of Iowa, the guests and friends of The State Historical Society were accorded the honor of numerous social hospitalities.

Beginning with Monday evening March the eighteenth, many guests were entertained by Dean and Mrs. Amos N. Currier at a meeting of the Political Science Club which was held at their home on Clinton street.

On Tuesday, Professor Eugene Wambaugh was entertained at luncheon at the home of Professor Benj. F. Shambaugh. In the evening of the same day Professor Andrew C. McLaughlin and Professor Eugene Wambaugh were guests of honor at dinner at the home of Professor Karl E. Guthe.

On Wednesday, Judge Emlin McClain entertained at luncheon in honor of Professor Eugene Wambaugh and Professor Andrew C. McLaughlin; and in the evening Dean Charles Noble Gregory gave a dinner with Professor Eugene Wambaugh and Professor Andrew C. McLaughlin as guests of honor.

On Thursday, the Board of Curators of The State Historical Society gave a luncheon at the Imperial Hotel, to which all those who took part

in the program of Conferences of that day were invited as guests.

On Friday, Judge and Mrs. Emlin McClain gave a dinner at their home in honor of Governor and Mrs. Albert B. Cummins.

While in Iowa City Professor Eugene Wambaugh was entertained at the home of Judge and Mrs. Emlin McClain; Professor Andrew C. McLaughlin, at the home of Professor and Mrs. Karl E. Guthe; Dr. Reuben Gold Thwaites, at the home of President Peter A. Dey; Congressman A. F. Dawson, at the home of Professor and Mrs. Benj. F. Shambaugh; and Governor and Mrs. Albert B. Cummins, at the home of President and Mrs. George E. MacLean.

PART II

THE ADDRESSES DELIVERED AT THE COMMEMORATION OF THE FIFTIETH ANNIVERSARY OF THE CONSTITUTION OF IOWA

A WRITTEN CONSTITUTION IN ITS HISTORICAL ASPECTS

By Andrew Cunningham McLaughlin

PROFESSOR BENJ. F. SHAMBAUGH (introducing Professor Andrew Cunningham McLaughlin): — The address of this evening opens a four days' program commemorative of the fiftieth anniversary of the formation and adoption of the Constitution of Iowa. It is fitting that this anniversary of our Constitution should be held at Iowa City, the historic capital of Iowa and the birthplace of all our instruments of fundamental law.

It is also proper that the program should be presented under the auspices of The State Historical Society of Iowa. For it was during the sessions of the Constitutional Convention of 1857 that our State Historical Society was founded. And so, in presenting a program commemorative of the Fiftieth Anniversary of the Constitution of Iowa, The State Historical Society incidentally celebrates its own semi-centennial anniversary.

Conspicuous in the events of the memorable year of 1857 is the name of James W. Grimes. He was the Governor of the Commonwealth; he was the prime mover in the revision and adoption of the new Constitution; and he was the first President of The State Historical Society. It is, therefore, both fitting and proper that his name be mentioned on this occasion.

To-night we will listen to an address by one of the leading historians of America, who comes to us from the University of Michigan, by way of the University of Chicago. Professor Andrew Cunningham McLaughlin will speak on *A Written Constitution in Some of its Historical Aspects.*

A WRITTEN CONSTITUTION IN SOME OF ITS HISTORICAL ASPECTS

That an institution of government, like an institution or practice of society, is a growth and not a creation is now an accepted proposition. No one seeks to argue for it; no one endeavors to deny it. The introduction of this idea into our political thinking markedly influenced our methods and our ideas. In no field of study has the evolutionary idea shown itself more strongly than among workers in history and political science. And yet occasionally one is surprised by seeing how recently this idea has manifested itself in the examination of some historical problems. Until a short time ago, the Constitution of the United States was commonly spoken of as if it was created by some two score men who debated and wrangled in the old State House at Philadelphia during the anxious and trying summer of 1787. Of course it is true that all things are new; and the Federal Constitution was in one sense a new product of the past. But the historian sees its fullest meaning only when he studies the long period during which the fundamental ideas and master prin-

ciples of the instrument were being worked out. The idea that the Constitution was not in all its essential features made at Philadelphia was successfully attacked only a few years ago, when the labors of scholars disclosed the fact that large portions of it were borrowed from the State constitutions which were themselves the heirs of colonial practices. Irrespective of the conscious adaptation of old institutions to a new situation, the Constitution was of course the deposit of experiences, the result of long-working historical forces.

But this notion that at given moments, at trying crises, inspired geniuses arise to fashion wondrous entities out of preceding nothingness has played in all our affairs a conspicuous rôle. The American people, who but yesterday were a European people, casting aside the trammels of old world life, and breaking their way into the new atmosphere of an untried continent, forced to shift for themselves and to adapt themselves to strange conditions, believed actually that they were sufficient in their strength at any moment to create what they needed or desired. This absence of historical perspective was perfectly natural, and there was something inspiring in the enthusiasm and assurance with which problems were solved or at least valiantly

attacked. Possibly this easy self-confidence was quite as useful and more effective than would have been any serious contemplation, any sober reflection over the forces, the successes and blunders of the past. And yet the readiness to go ahead blindly in answer to the promptings of the moment is not the characteristic of the wisest statesmanship; it is not the nature of the freest state; for the highest freedom must come from right thinking; the best statesmanship must come from self-knowledge — a knowledge of the real state of which the statesman and the law-maker is himself a part, a knowledge to be gained by a study of the state's growth and not simply from the little space of one's own forgetful experience.

This introduction is not, I think, inappropriate on an occasion when we celebrate the founding of a Constitution which has lasted half a century. We are pausing here to look back for fifty years, to do honor to the men who were instrumental in bringing into existence the fundamental law of this great State, to realize that under that law a people has grown in numbers, in strength, and in prosperity, and to be thankful for the wisdom of the statesmen who wrought so wisely and so well. But we need not think that the Constitution of Iowa was made here

fifty years ago, or that we can understand its significance, if we limit our view to the debates of the Convention, the decisions of the courts, or the prosperity of the people. This Constitution, like all others, has a long and interesting history, reaching far back of the days when these men met here. Some of its provisions can be clearly known, only if we follow their courses through centuries.

Students of American constitutional history begin at least with the Charters that were issued at the end of the fifteenth century. In fact the colonies that sprang from feudal beginnings, like Maryland or Pennsylvania, demand for their understanding a knowledge of feudal principalities; Maryland takes us back to the time of William of Normandy, if not eleven hundred years to the time of Charles the Great. A colony like Massachusetts, founded as a corporation, calls for an understanding of the early trading companies of half a millenium ago. And thus we see that the modern State Constitutions have an honorable lineage; instead of being struck off in a moment of inspiration to suit an emergency or a temporary exigency, they are the products of effort and struggle and experience; they are molded and fashioned by the needs of passing generations. Such a thought as this

doubtless makes us hesitant about recasting our laws and makes us skeptical of our ability lightly to create what the moment seems to demand. But the development also shows us that man can not consciously create unchanging institutions for the future; that history, social forces, and needs are the real makers. And after all there is no great need of unreasoning fear; you cannot cut yourselves off from the past; it is here with you and will meet you as a friend or an enemy at every turning of your career.

It is not my intention to dwell at length on the development of State Constitutions from the old corporation Charters. The examples of Connecticut, Rhode Island, and Massachusetts are there where every one may read. It is interesting, to be sure, to trace the development of the Massachusetts Constitution from the Charter, or articles of incorporation, of a company — the president or governor of the company became the Governor of a Commonwealth; the assistants (the board of directors as we might call them) became the council or senate; the freemen of the company (the stockholders, to use a modern term) became, by representation, the deputies or later the house of representatives. It is profitable to trace the growth of

Maryland from a palatinate modeled on the palatinate of Durham into a self-governing state, gradually shaping its institutions to meet the wants of a free people who were growing in capacity for self-government under the stimulus of new opportunity. And of course we must remember that these new western States were, in many ways, but replicas of the eastern States, and that these new communities owe their Constitutions therefore to the long history of aspiring colonists and to the shaping and upbuilding work that went on through a century and more of colonial history.

There are, however, other aspects of the subject upon which I wish to dwell; only by studying these can we see the full significance of the modern written State Constitution. I have intimated that the history of these documents can be traced back to the feudatories of the middle ages or along another line back to the trading charters of the same era. But following another line, a line of fundamental ideas, we find again that we need to go some distance to the past to appreciate what we have.

It has been said that the modern idea of popular sovereignty, of democratic control, took its rise with the little groups of Separatists, who in the time of Elizabeth set up their right to come together and worship as they chose. Each

little band of worshippers considered itself a church, capable of deciding for itself the principles of its action and establishing its own polity. It is true that any method of historical investigation, which attributes a wide and influential movement vitally affecting a great portion of mankind to one particular episode or to one group of men who can be isolated and numbered, has its elements of untruth; but the connection between the movement for self-determination in church and the movement for self-determination in politics is fairly evident. As to form and methods at least this connection is clear. The assertion that men could govern their own ecclesiastical affairs was a revolt against the principle of superiority in the affairs of the world, a revolt which made way for the assertion of popular control in political affairs. I am not now insisting on the value of the Reformation, which many would consider a misfortune. I am not now emphasizing the individualism that is significant of the Reformation and to which many would attribute the growth of personal freedom. I am confining my attention to this movement for ecclesiastical self-government in England.

We know very well that it was a little body of these Separatists that founded Plymouth and there set up their self-governing church and self-governing state. The famous compact, of which

we have heard so much, has been both unwisely praised and unwisely depreciated. Upon it the little Pilgrim state was founded; for, whatever we may say of technical law and of the subordination to England, Plymouth was to all intents and purposes self-governing and was reared on this compact, which was a church covenant in fact, turned to new uses to form the basis of a state. It was but the first of a series of plantation covenants; for, while the Constitution of Massachusetts was forming, growing out of the charter of a corporation, here and there men were organizing little self-governing communities, built upon the notion of individual right to do what one would with oneself and on the notion that one could form a community by agreement with others. We have not in our histories sufficiently marked the significance of these plantation covenants. We have treated the compact political philosophy of Milton and Sidney and Locke, and other great writers of the seventeenth century, as if they were writing in the rarefied air of abstractions and vague theory, and as if the compact origin of society and the state were but a convenient fiction or a useful fancy, forgetting how it in essence underlay the doctrine of Independency and was carried into effect in the churches of the Separatists, forgetting too that in the wilds

of the new world little groups of men were giving examples of common life and political control. At a time when men were actually living up to the notion that people were separate and could organize a body by agreement, it is not to be wondered at that the philosophers and political writers should set up political theories based on the notion that society was organized by the action of detached individuals, by abstract individuals, so to speak, who came together to surrender a part of their self control in order to preserve the rest. Not that I mean to declare that the philosophers actually borrowed their ideas solely from the towns of New England or even, perhaps, from the Independents of Old England; for the doctrine of compact and of a natural right, that antedated society, was much older than New England or than Cromwell's soldiers. The contention is, first, that this philosophy is more concrete and appears as a more natural emanation of its time, if we connect it with the actual deeds of men; and, second, that Independents were doing in England in ecclesiastical matters the very things which the Puritan philosopher was claiming to be the natural order and process of things in the social and political world. Anyone interested in the political as well as the philosophical influence of Independency will find food for contemplation in the

fact that in the efforts at constitution-making during the period of the Great Rebellion of England, in the arguments for establishing a state without a king, the soldiers and officers of Cromwell's army, the Independents, very evidently insisted upon a basis of right and a basis of action, quite in advance of that set up by the lawyers and statesmen of the same party, who had not broken away from the old ideas of law and custom and were not ready to start with individual separation and to announce the right to organize a state and a government on the basis of the agreement of the people.

Probably we have not given sufficient weight to the influence of New England on Old England in the days of the Great Rebellion. To measure influence is beyond the skill of the historian; but we are justified in believing that the reaction of the new world on the old was even then considerable. We are justified in believing that the Puritans of England knew of the success of the men who came across the water to found a Bible commonwealth, and it seems reasonable to believe that the example even of such a State as Rhode Island, distracted and incoherent as it seemed to the orthodox men of Boston, must have had considerable influence with the debaters and thinkers

of the trying years, when men were struggling with a tremendously difficult thought — how could a state rid itself of a King, and how could a popular government resting on the consent of the governed be actually brought into existence?[1]

It was inevitable that the men, who were seeking a new political order in the middle of the seventeenth century, should have trouble in seeing their way with clearness along lines that appear to us now fairly obvious. That government sprang originally from the people was proclaimed as a self-evident truth. "It being manifest", as Milton says, "that the power of kings and magistrates is nothing else but what is only derivative, transferred, and committed to them in trust from the people to the common good of them all." But how a new government was

[1] No one having any conception of the part played by covenant in the theology of at least some of the advanced Protestant sects could very well fail to see the connection between the whole theological notion and the conception of the organization and powers of the state. Not only did churches, the Congregational churches, have covenants, but the very existence and perpetuity of the world rests, according to this notion, on covenant and agreement. It is the covenants of God, the pledges by which He binds Himself, upon which we rest, and upon which we base our hopes and faith. The assurance that the Great Sovereign is bound to His people by solemn covenant and will not disregard His obligation is thus the basis of Christian hope. Covenant, agreement and promise formed the serious central thought of stability, strength and fulfilment. In this way, as well as in many others, the essential notions of Protestant theology worked their way into the conception of the character and obligation of the state.

actually to be brought into existence was another question, a government derived from the people and obtaining its powers from the people. Devoid of practical machinery and experience, the advanced thinkers of England proposed to act upon theory and to establish a government on the expressed consent and agreement of individuals, as if each were detached and could enter by his signature into a new compact and establish a new government over himself. Nothing is more suggestive to the student of American political institutions than the proposals and the arguments of the men of the Great Rebellion in England, when they were confronted with the task of organizing a commonwealth, of carrying out their philosophic ideas and of really rearing a state on the consent of the governed.

It is full of interest to American students because one hundred and twenty-five years later a like task faced the men of the Revolution, who sought argument for denying the asserted control of Parliament and for throwing off the rule of a King who by "a long train of abuses and usurpations" had "evinced a design to reduce them under absolute despotism." The argument and philosophy of the American uprising against George III takes us back at least to the Great Rebellion and to Cromwell's Ironsides and discloses the essential truth in the assertion, that in

the American Revolution the England of the seventeenth century met and maintained itself against the England of the eighteenth.[1] No sententious utterance like this is wholly comprehensive and sound; but it brings out the great fact that the principles that threatened the divine right of Kings and asserted the divine right of the people, and that proclaimed that government was derivative and kingship a trust, found its refuge in America in the seventeenth century, developed there in quietness in the spirit and capacity of the people, and came forth to challenge the power of England in its stamp acts and port-bills, and to be used as the basis for proclaiming that these united colonies are and of right ought to be free and independent states.

[1] See for one illustration of the likeness of the two revolutionary movements the following:

"That when a person trusted with a limited power to rule according to lawe and by his trust (with expresse covenant and oath also) obliged to preserve and protect the Rights and Liberties of the people . . . shall flye to the way of force upon his trusting people, and attempt by it to uphold and establish himself in that absolute tyrannical power so assumed over them, and in the exercise thereof at pleasure; such a person in so doing, does forfeit all that trust and power he had, and (absolving the people from the Bonds of covenant and peace betwixt him and them) does set them free to take their best advantage, and (if he fall within their power) to proceed in judgement against him, even for that alone if there were no more." — A Remonstrance of His Excellency Thomas, Lord Fairfax and of the General Council of Officers. London, 1648. Pp. 21, 22.

I wish this statement to be taken not merely as an attempt at rhetoric, but as sober historical truth. The philosophy and the argument, the basis of assertion of the American Revolution, are a striking reproduction of that of the Great Rebellion in England. The interesting historical fact is that the declaration of the philosopher and the soldier and the Separatist pamphleteer of the middle of the seventeenth century formed the argument for the successful revolution of the eighteenth; and their descendants on this side of the water carried those ideas into effect, not simply by throwing off the power of George III, but by embodying the ideas in institutions and by reducing them from abstract formulae to actual practical governmental principles.[1] As far as theory was concerned the men of 1650 had worked out fully the basis of the American Revolution.

The notion of natural right, of the origin of government in agreement and consent, did not find its sole expression in the manifesto of independence or in the oratory of the statesman and the demagogue. America, taught by experience with popular institutions, proceeded, sometimes

[1] The student of the Revolutionary period knows that many lines of argument were followed. I have in mind here the salient and impressive argument that came from Massachusetts and to some extent from the other colonies, from Jefferson as well as from Samuel Adams.

with misgivings and doubt and at other times with haste and overconfidence, to work out the methods for establishing governments on the free consent of the people. The statesmen of the time might have actually treated each individual as if he were wholly abstracted from society and ready once again to enter into a new social order out of a state of nature in which he was a detached and separate individual; for such indeed, as in 1650, was the theory underlying much of the thinking of the time and underlying the Constitutions that were to be framed; but the leaders did not totally disregard established institutions, draw up a contract and call for signatures. In some of the States the methods were illogical; in Massachusetts under the guidance of John Adams a new Constitution was framed on the logic of the principles of the Revolution. The Constitution of Massachusetts, drawn up by a body of delegates especially chosen for the task, was discussed and debated in the town meetings and ratified by their votes. In that State there came clearly forth the functions, the place, and the character of the constitutional convention — one of the greatest contributions, perhaps the greatest contribution, of America to politics and political order — a method of establishing a commonwealth without confusion, a method of permitting the people to

rear, as Adams said, "the whole edifice with their own hands," a method of making actual the dreams of philosophers, political pamphleteers and statesmen of the seventeenth century in England. Here again let us not lose ourselves in rhetoric; this identical problem had been attacked by Puritans from whom the early men of Massachusetts came. The significance of what the Americans did in developing the constitutional convention can be seen in its simplicity and force, only when seen with this back-ground of discussion, uncertainty, and desire that fully showed themselves in England one hundred and thirty years before Massachusetts was called on to form her Constitution. It may be that, had the principle of contract been strictly lived up to, no one would have been bound by the Massachusetts Constitution unless he voted to ratify it; but doubtless any malcontent would have been free to leave the new commonwealth; and we must not lose sight of the fact that the Constitution purported on its face to be a social compact.[1]

[1] "We therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the Great Legislator of the universe, in affording us in the course of His providence an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit and solemn compact with each other . . . do agree," etc. — Preamble of the Constitution of Massachusetts.

The principle that the Constitution is a compact, into which each individual enters out of a state of isolation, which the philosophers called the state of nature, has deeply and perhaps permanently affected our public law. It is astonishing and impressive to see the modern jurist talking in terms of compact and natural rights, after the fundamental conceptions, on which those terms rest, have altogether disappeared from ordinary modern thought and modern life. We know perfectly well that government rests on authority, not on the consent of separate individuals, that that authority is the people of the state as an organized political unit, that the Constitution expresses the will of that unit, which is known to the law and exists in fact as an entity to establish the Constitution. We know too that there never was a state of nature in which men existed as monads and from which they entered into society. We know that rights in any legal sense are the creation of law and exist because of government, that all the new needs and the new justice are not implanted in the heart of primeval man but have come as he has grown and as society has developed in depth and complexity. We see that the whole thinking, upon which the notion of natural rights and of compact rests, deserves the word artificial; it includes the notion that men consciously out of stuff in their own hands

can deliberately make a society or a state, as a cabinet maker would fashion a bureau or an easy chair.[1] We know that every branch of modern scientific thought is governed by the thought of growth, of unfolding and not of conscious creation. We thus find perpetrated in our constitutional law — not to speak of other branches of jurisprudence — a method of thinking that the rest of society has entirely abandoned; and one of the greatest puzzles of modern times is to adapt a system of judicature founded in extreme philosophic individualism to the needs of a society which in some of its aspects is almost burdened with its capacity for expressing the truth of organic growth and organic being. Perhaps it is more correct to say that there is always in society a conflict between the individual and society; but, with all our aggressive individual initiative, the Americans have been gifted too with humanitarian sentiment and with remarkable power of political and social combin-

[1] I do not mean to lose sight of what appears to be an historical fact and therefore not artificial that from time immemorial there seems to have been in England a sense or a feeling, if not properly expressed in law, that there were "real restrictions" upon King and Parliament, a certain continuance through the centuries of the old individualistic feeling of the Teutonic people. — *Cf.* Jellinek's *The Declaration of the Rights of Man and of Citizens* (Farrand translation), p. 93.

ation. The great industrial combinations are in themselves made possible by this spirit and this capacity; and it is a striking fact that manifesting as they do this phase of American ability, and illustrating in all their activities the essential organic compactness of American life, they seek to be governed by the principles of pure individualistic law, inherited from a time of individualistic thought and endeavor. I am not unwilling to admit that the doctrine of natural right and of contract may be a convenient fiction, and I should like to believe that law, based on a principle of thinking foreign to the activity and foreign to the thought of the community in which it acts, can be abiding and useful; but there is an evident difficulty in adjustment. Whatever my fears or beliefs may be, the facts are so; and surely it is a startling truth, that just as a phase of human thought, which in some of its aspects was older than the Christian era, was beginning to pass away from the human mind, new bodies politic should be established in this new world based on these old fundamental conceptions, which were indeed for the first time thus given adequate institutional expression.

The great movement for individualism came to its fullest fruitage in the Revolution and was

installed in instruments of government that were declared to be permanent; states were organized on a basis of individualistic democracy, just as democracy was about to leave its phase of pure individualism and reach out for a higher, deeper and different meaning — moving on into a condition of society in which the most selfish should reap their highest reward, not through individual and detached effort, but through combination; in which the propelling forces that are upbuilding come from surrender to the spirit of brotherhood and from an effort to raise one's fellows; in which, more than ever before, government is called on to do the things we can not separately do ourselves. We have fully abandoned the idea that the sole duty of government is to keep the peace and to leave to the individual the task of struggling in all kinds of competition with his environment and his neighbors. We do not believe, as Tom Paine says, that government like dress is a badge of lost innocence. We have left far behind in most of our thinking the notion that government is man's enemy. The old democratic ideal of man free from restraint, rising by virtue of his own buoyancy to the place he earns by dint of his unaided effort, has not, we hope, entirely gone; subjection or a stagnant condition appear still the essence of injustice. But we are beginning to see that competition,

unqualified and unregulated, may be bitterly unjust, and above all that great combinations that take advantage of social organization to work for personal ends need restraint and control in the interest of humanity and society. And so again the puzzling problem which is being worked out in the legislative halls, in the social order, in the books and brains of thinking men, is how to adapt institutions based on individualism, the product of centuries of effort to reach personal right and personal justice free from the restraints and the wrongs of external and arbitrary power — how to adapt such institutions and how to fashion our political thinking to a new order of things. No more significant contrast could be made than that to be drawn between the utterance of the present leader of the party, that claims its descent from Thomas Jefferson, and the assertions of Jefferson himself in his famous inaugural of 1801:[1] "Still one thing more, fellow citizens — a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the

[1] I need not say that this contrast is simply an historical fact and not intended as an indorsement or a refutation of the advanced democratic collectivism which now dominates one wing of the Democratic party of the day.

mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities."

To understand properly the modern written Constitution and the problems of its existence we need to look at another line of development. The efforts of English history were to establish a government of laws and not of men — to discover some method of avoiding arbitrary government. Of course this effort was directed against the King, and, in considerable measure because of this opposition to the King, the Commons of Parliament developed their powers and their privileges. But in the seventeenth century this effort reached a wider stage, and, though at various times we see a desire to increase the powers of Parliament against the King, and, though often in fact this desire appears to be controlling, it is plain that the ablest minds went farther and sought a government bound in all its parts by some power greater than itself and checked by some restraint which it could not sweep aside. One needs to read only the Instrument of Government of 1653, in light of the discussions that preceded it, to see that it was a faint approach to a realization of this idea; and the same thought appears in Harrington's *Oceana,*

a work which had considerable influence in America one hundred and twenty-five years later. [1]

I have remarked on the trouble men had in thinking of a suitable means of bringing a real popular commonwealth into existence; their difficulty in discovering some suitable manner of binding the government, when once it was created, was even greater. They saw the necessity of stability, of regularity, of rigidity if you will, in the fundamentals of government and in the bounds of its power. Liberty was not, even for them in their individualism, mere opportunity to do what one would; it consisted, in the minds of the best thinkers, in the privilege of living under a government restrained from acting on whim or caprice. But how attain such an end? No government, it was assumed, could rightly disregard the rights of nature; every governor must rule for the common good. "And so", says Locke in his second *Treatise on Government*, "whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws, promulgated and

[1] Harrington approached an adequate description of government by the boss, when he said: "And Government, to define its defects, or according to modern prudence, is an Art whereby some Man or some few Men, subject a City or a Nation, and rule it according to his or their private Interest; which because Laws in such cases are made according to the Interest of a man, or some few families, may be said to be an Empire of Men, and not of Laws."

known to the people, and not by extemporary decrees, by indifferent and upright judges, who are to decide controversies by those laws."[1] It is not clear that Locke saw those laws as anything more than laws promulgated by the government itself; he did not see — perhaps he did not care to see — the use of a Constitution superior to government and binding upon it. In the end he resorted to the right of revolution as a remedy or an assurance that government would keep within limits: "Should either the executive or the legislative, when they have got the power in their hands, design, or go about to enslave or destroy them, the people have no other remedy in this, as in all other cases where they have no judge on earth, but to Heaven."[2]

It was this principle of the unalterability of standing law that underlay the American Revolution. The writings of Sam Adams, the Father of the American Revolution, once and again declare this doctrine, maintaining that the English Constitution in its essentials was not what

[1] Locke's second *Treatise on Government*, § 131; and compare § 22, where he declares: "Liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under dominion of any will, or restraint of any law but what that legislative shall enact according to the trust put in it." Locke of course wrote forty years after the Great Rebellion; but he phrased admirably much of the thinking on which the advanced actors of the Commonwealth proceeded.

[2] Locke's second *Treatise on Government*, § 168.

the Parliament might for the moment declare it, but unchangeable; and this very unchangeableness was the basis of liberty. Helped by their experience of life under a written charter of government, the people of Massachusetts, in their argument against Great Britain, carried forward to a logical conclusion the principles of Harrington, Locke, and Sidney and the Puritans of a century before. "In all free States", the Representatives of Massachusetts declared, "the constitution is fixed; it is from thence, that the supreme legislative as well as the supreme executive derives its authority. Neither, then, can break through the fundamental rules of the constitution, without destroying their own foundation."[1] "There are, my Lord, fundamental rules of the constitution, which it is humbly presumed, neither the supreme legislative nor the supreme executive can alter."[2] Thus the Massachusetts Representatives in 1768 expressed the idea of a binding Constitution and of the source of governmental authority superior to government — a Constitution unalterable because it has its foundation in the immutable laws of nature. Few facts in our constitutional history are more worthy of attention than this meeting of the lines

[1] Written in 1768.—Samuel Adams's *Writings*, Vol. I, pp. 170, 171.

[2] *Ibid.*, 156.

of progress in the announcement of a proposition on which new commonwealths were to be reared and a great war fought to a conclusion: one line runs from the charter of 1628-29 which incorporated a company, a corporation undistinguishable on the surface from the great trading companies like the East India company or the Hudson Bay company, whose officers were necessarily limited by the terms of the charter; another line runs from the discussions of the philosophers and soldiers of the seventeenth century in England, who were striving to describe a government of laws and not of men; another line is to be traced through the Separatist foundation of church government, the principle of religious individualism and the organization of polity in agreement and covenant.

But the Americans went farther than announcement. They fully institutionalized this principle of the unalterability and fixity of the Constitution. They drew up Constitutions impregnated with the principle that liberty exists where government is limited; and little by little they came to the fulfilment of the idea that government is not the state, that it is the servant of the people, that it acts within specified limits, and, to sum all, that Constitutions are themselves laws. As a result, any act purporting to be done by governmental authority is mere usurpation,

void, if it goes beyond the limit of law. This proposition, fairly easy for men who had lived under colonial legislatures, strikingly concludes the great development of English constitutional history towards a government of laws and not of men and strikingly answers the anxious questioning of the men of one hundred and forty years before. It rests of course upon the idea, now made actual, that the government is not the state, and that the fundamental law springs, not from government, but from a power superior to government, the state itself. In realizing this idea and by making the Constitution law, the courts were for the first time in history called in to apply the Constitution as law, and to sustain the foundations of the state. From the mere fact that the Constitution was law, the courts were under obligations to recognize its binding force.

Although the judges in a few of the individual States had announced, though not with full and clear logic, a principle similar to this, the Constitution of the United States was the first document distinctly to announce the fact that it was law. This declaration, moreover, was made preëminently to support the arrangement of a federal state, to offer reasonable assurance that the States would not do anything contrary to the Constitution; for it was declared that the Constitution, laws, and treaties should be the

supreme law of the land and the judges of every State should be bound thereby — in other words that the judges of the State in deciding suits must recognize to apply the Constitution of the United States. Only one who has studied the efforts of the thinkers of the seventeenth century to reach an ultimate beyond government and to make this ultimate of permanent and binding effect can appreciate the significance of the declaration that the Constitution is law, can see the full meaning of this calling in the courts as a third institution of government to maintain and sustain the essential organization of the body politic.

The idea that the Constitution is law and enforceable in courts has occasioned some criticism and dispute. For at certain junctures even those, that were not unwilling to admit that the legislature was bound by the Constitution, have asserted that the activity of the courts is an unwarranted intrusion, although it is based simply on the principle that the law emanating from the people is superior to any act contravening it. And there has arisen on the other hand the very foolish idea that the supreme court of a commonwealth is the only tribunal capable of disregarding the law of the legislature on the ground that the law is unconstitutional — an idea based on the strange notion, that only the highest tribunal

is called upon to declare and apply the law in distributing justice to litigants. It is moreover not uncommonly said that the legislature is confined to considering merely the expediency of measures and that the courts alone can look into their constitutionality; but this is another absolutely illogical proposition — as if the legislators themselves were under no obligations to endeavor to execute the trust of the people and to keep within the bounds of activity marked out by the people in the making of the Constitution. But possibly the most illogical and dangerous of the recent doctrines is the declaration that an administrative officer does not render himself personally liable by the enforcement of an unconstitutional law or administrative act.[1] Such a doctrine at once undermines the principles upon which the rights of the individual rests. It neglects the fundamental notion that each man is responsible for his own wrongs and that an officer acting beyond the limits of his constitutional authority is not an officer, but a personal trespasser. How shall we preserve "a government of law and not of men", if we can not reach the officer who carries out an illegal act?

At the beginning of the twentieth century we have come, in silence or in noisy disputation, consciously or unconsciously, to doubt some of

[1] See Brooks *vs.* Mangan, 86 Michigan 576.

the fundamental principles on which our institutions have rested. As I have already said, doubts have arisen in the minds of some, who appreciate the nature of our constitutional assumptions, as to whether it is possible for a modern state to do the work with which it is oppressed if it is to continue on a basis of individualism. In some particulars this question has arisen with regard to the application of criminal law. Our constitutional declarations were framed as the result of centuries of unjust and arbitrary treatment of the accused, when the government was supposed to be the enemy of the individual. In enforcing the constitutional privileges it sometimes appears as if the state had forgotten that it was quite as much its duty to convict the guilty as to protect the innocent. To the laymen there would seem to be no reason for the continuance of the individualistic atmosphere of criminal law in a country where crime is rampant, and where the accused, if arrested, finds opportunity to take advantage of numerous and unimportant technicalities — in a country where the law's delay is for the assistance of the predatory and the unsocial.

But more distinctly we have come to doubt whether men can do their duty to man, if they are hemmed in by the restrictions of individualistic law. Those who work in the slums of the

large cities and give their lives to elevating and comforting their fellow men, who see the horrors of the tenement and the sweat shop, who come face to face with what misery can be wrought by the unbridled energy of avarice and selfish greed, demand now and again, with an energy that comes from conscientious conviction and whole-hearted devotion to right, restraints upon individual privilege of contract, and in reality demand a total surrender of the old fashioned notion that one can do what one will with one's own. That such demands go too far, we may believe; for, after all, the doctrine of the police power is now so widely developed that the State has the right, supported by decisions, to prohibit individual action or to restrain the personal right of contract, where action or agreement appear in the opinion of legislatures and judges to be distinctly detrimental to the public weal. The very latest decisions of the Federal Supreme Court [1] declare that the police power

[1] "In that case," says the Supreme Court of the United States, referring to the case of Chicago, B. & Q. R. R. Co. *vs.* Illinois, 200 U. S. 561, 592, "we rejected the view that the police power can not be exercised for the general well-being of the community. That power, we said, embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety." — Bacon *vs.* Walker, decided Feb. 4, 1907, by Justice McKenna. Under this doctrine any interference with private conduct would be rightly regulated by legislation if it happened to strike the court as substantially helpful to the convenience of the community.

extends to acts which are conducive to the convenience and prosperity of the community, and not simply to the prohibition of what may be distinctly detrimental to the public health or safety. On such an opinion as this the courts may, it appears, support any State law which would seem on its face conducive to the public well-being, and the old individualistic theory is reduced to a point of view from which to approach the consideration of a governmental act.

This proposition in its wider application has had to make way against all sorts of strenuous opposition, against learned briefs from able lawyers who base their arguments on old conditions, and who start with the old idea that the function of government is to keep the peace and allow individual initiative and individual right of contract full sway. Moreover there has arisen constant necessity for watching narrowly this power of the State, for it is often invoked not for the common good, but for the supposed advantage of classes and cliques. If a law to limit the hours of work in bakeries, like that of New York recently passed on by the courts, has for its purpose, not the uplifting and protection of the health and well-being of the community, but the giving of advantage to a certain class of workmen without regard to rights and desires of the

rest, or if it is merely an attack on an employer's right of contract, it can hardly be rightly supported as an exercise of the police power, which has in recent years made such inroads upon the notion of unrestrained individual struggle. This growth of the police power is a striking development of social rights in opposition to the assertiveness of unchecked individual privilege, and if the individualistic interpretation of our Constitution and laws is to abide, it is because, by the exercise of the police power, a new principle of collectivism has become dominant and controlling in cases of a clear and absolute need.

This principle of correction is antithetical to the doctrine of socialism in spite of its similarities; it proceeds on the notion of personal ownership and personal right of determination; but it controls individualism by consideration of public well-being and convenience, and, rightly applied, puts the interests of the state above the interests of any of its members. In developing and applying the police power, the courts have had a new duty that has almost taken them from the field of distinct law; and, if the power is to be rightly and effectively used, it would appear that time and again the judges must be guided not by precedent but by sense of

substantial justice and by considerations which appeal rather to their intelligence as statesmen and wise humanists than to the learning of book-read laywers. If the power is to be rightly and effectively used, I say; for by this route of incroachment on niggardly, selfish, personal greed, the state, the main body of the people, can reach, if they can at all, the popular care for the common well-being, without totally undermining in theory the principles of individualism underlying our laws and Constitutions. It appears indeed that the courts and law-makers, by one of those startling inversions that occur in human history, have been irresistibly called to grasp and promulgate a new doctrine of natural right — new at least as compared with the old doctrine of the Independents, of Sam Adams, and Thomas Jefferson — not the doctrine of the right existent in a state of nature, which existed before society, and for the protection of which society was established, but the right of substantial justice to society itself; and, in the declaration of what government can do and what it can not do, the sense of this right, like the old natural right, depends, when all is said, on a feeling for justice and not on humanly ordained law or statute. There is need once more to revert to the absolute as shown by the reason.

Within the last few years we have come almost to doubt the wisdom of the Fathers in trying to build up a great empire on the principle of law, in trying to form a great federal state where powers of government are distributed between the center and the parts, and in basing that distribution on a law unchangeable save through a combination and an effort difficult to attain. We have seen how out of our Revolutionary struggle came the States with Constitutions recognized as law; and this legal foundation constitutes one of the two or three distinct contributions of the Revolution in its constructive aspect. There came into existence too a democratic empire founded on new principles. In the course of the Revolutionary argument certain characteristic differences of opinion between England and America showed themselves. In England the contention was for an empire with all power gathered at the center; all local power was to be exercised of grace and not of legal right. The Americans in one form or another, demanded a legal empire, in which the localities, the States of the empire, should have their assured privileges, resting on no caprice of the central authority. After the Revolution two empires were in existence, both the products of English history; one was built on the principle that all legal power was at the center however

meagerly such power might be used, and that an empire could be reared under the guidance of opportunistic common sense and under the tutelage of justice. On this basis England has succeeded, and, following the lamp of experience and led on the whole by wisdom, has created and governed a stupendous Empire. America's course has been different. Even before the Constitution was formed, her new colonial system was formulated in the famous Ordinance of 1787, which was fundamentally an unchanging law, as far as the opportunities of the time permitted or appeared to permit. When the Constitution was adopted, the new federal state came into existence, having for its most elementary idea the distribution of power between the center and the parts of a far-reaching democratic empire, a distribution made permanent by law and not to be varied by opportunistic reasoning or by appeals to temporary or eternal justice.

The continuance of a great federal organization, its bounds and partitions firmly marked by law, must depend on the accuracy with which that law distributes authority between the center and the parts. If the distribution is in accord with a mere temporary condition; if it does not leave to the States the powers that are there appropriately exercised; if it denies to the central government the control of subjects really

general in character; if there is no proper room for local self-determination; or if on the other hand the impulses and desires of the great body of the people find themselves hampered by the local obstinacy, local incompetence, or local selfishness and greed; if in short the distribution is not based on adequate and abiding justice and need, there is likely to arise conflict, disorder, uncertainty, and confusion — I do not mean that there will be war necessarily; but there will be the jolting, jarring, and rumbling of ill adjusted machinery, the presence of political disorders which suggest inappropriateness of governmental system.

The effort to continue uninterruptedly in accord with a Federal Constitution drawn up in days of individualism, and distributing authority between the government and the States, a Constitution made at a time when the States were living in comparative isolation, before the railroad, before the telegraph, before the thousand and one changes that have broken down State barriers in fact and welded us in reality, if not in law, into one mass in many social and vital particulars — the effort to continue uninterruptedly on the basis of such a law has produced difficulties and demanded numerous adjustments. These adjustments have been made easy in part by the general terms in which the Constitution

of the United States is framed, making it unnecessary to follow literally the ideas that were present in the minds of its framers, who could not of course foresee one-hundredth of the future development or imagine even faintly its meanings. The only vital changes made in the Constitution by formal amendment since its beginning have been directed to lessening the competence of the State, not to increasing the vigor or the legislative scope of the national government. It is a striking fact, that, even if the States are now declared to be, because of their spatial limitations and their legal limits, unfit for undertaking new duties which have been brought about by the national expansion of industry, the State Constitutions have been frequently amended to adapt them to new phases of thought and new needs. They are today almost the best indications of change of public conditions in the last hundred years while the Constitution of the United States has been altered but once radically and then for the purpose of calling in national power to *restrain* State activity not to increase its own legislative competence. Were it not for the fourteenth amendment, there would today be almost nothing the State could not do through its Constitution in disregard of individualistic doctrine.

Can our elastic Federal Constitution framed under conditions so different from those now existing, continue to be respected, in so far as it limits the competence of Congress? Many things have been done in the past and are done daily that are so far in advance of any conception of the Fathers, that we find difficulty, by processes of devious ratiocination, in reconciling them with the idea that the Constitution is a document of enumerated powers. But these changes have come slowly, and we have thought that we were still clinging tenaciously to the principle of law and the theory of constitutional limitation. Now, however, we are frankly told that the great fact of a national conscience, a national will, and a national need must be recognized; if the States cannot individually do their duty, it will be done for them. This frank statement is not, as I conceive it, a threat, at least not a declaration of any imperious purpose to disregard the law or arrogantly to sweep State rights into the muck heap. It is an honest clear-headed avowal of a very evident social truth; State negligence, State incompetence, State selfishness will not be permitted to stand in the way of overpowering national desire and a demanding national conscience; to say so is only to speak plainly what students of history know. The preservation of State rights depends as ever on the performance

of State duties. If local self-government, as exemplified by the State capacity for self-management, is still of value, it must be maintained by unselfish devotion to right and justice.

In some particulars it may be that the nation will assume powers simply because they cannot be exercised by the States. We may find the national government taking charge of all trade and industry; we may see a law compelling all corporations engaged in commerce to reorganize under a federal charter; we may discover that insurance is commerce and that insurance companies doing business outside of a single State are forced to accept national regulations. We may moreover find other powers assumed by the national government because the States do not exercise considerately the powers they have; we may conclude that a State like New Jersey cannot be allowed to create trusts as a business, and that manipulation of securities is subject to national control. We may think that State marriage and divorce laws must not be made without consideration for the beliefs (and shall I say the rights?) of the people of other States. We may exercise the national power to prohibit child labor in local factories.

But it should be noticed that in all this there are several serious dangers. In some way we often go on the supposition that the federal

authority is not of ourselves, but something apart and above our impulses; and this is simply destructive of the spirit of self-government. If the people of the State are on the whole derelict about duties that *can* be performed through local law, can we have assurance that the authorities at Washington will be superior to unwholesome influence and incompetence? Much of the demand for national interference comes from a curious unreasoning dualistic conception, as if the national government were a power disassociated from the people of the State, and as if the people of the United States were not also the people of the States. We forget also that because of our complicated system of checks and balances, because of an administrative system without ministerial responsibility, and because of political parties with a tremendous organization almost unknown to the law, national action can with great difficulty be made responsive to popular mandates.

I can not refrain from pointing out also what each of you must have thought of — the danger that comes from a conscious disregard of law. If the national government in answer to a real national need can assume powers that are not granted, not only shall we lose local autonomy in considerable measure and surrender to that degree our conception of a federal state; but we

shall consciously give up the idea of a law-abiding state and enter once again upon a government of men and not of law; we shall revert, in other words, to the condition against which the Fathers struggled and against which the forces of liberty were arrayed for centuries in English history. If the federal government can under pressure reach beyond its legal competence to do things for the State, there can not in logic be an end; the very framework of government itself may be warped and broken under the pressure of opportunism and exigency. It is easy enough to argue that a President can go beyond his constitutional limits because he can act more expeditiously than a cumbersome Congress. Even now, at least one able, influential, and thoughtful journal (I do not mention the hare-brained variety) is demanding "centralized democracy", which is a euphemism for consolidated government and centralized authority. But from the highest point of view, can there be any greater danger than the conscious breach of confining law, unless it arises from the hypocritical pretense of regard for law, while one is consciously going beyond its limits? Have we reached that stage in our fretting against the bars of legal federalism?

It is strange, then, I may say in conclusion, that the two fundamentals that were striven for so long, the two great ideas which were embedded

in our Constitutions and which appeared to make them the lasting resting place of permanent principles, the product of centuries of discussion and combat, are now in especial peril. To say the least we are looking at them critically and pondering their value. Have we outgrown the idea of essential individualism with which our Constitutions are impregnated, and the great idea of building up a competent federal republic, not on optimism or a temporary view of justice, but on law?[1] It was a saying, I believe of Castelar, that man is free when he has to obey no one save the law. We may stop to question whether we really are free when we see that we are compelled to shape our actions by all sorts of men that prey upon the community. But we may add to this saying that liberty exists under government when there is a standing law to live by; and this, which is of course the elemental American idea woven into our Constitutions, means that, if we have liberty, government itself must be the slave of law. Are we ready in studied inadvertence or

[1] It should of course be noticed that this was the essence of the Philippine question. The judge, that announced the doctrine on which the government of the Philippines rests, has declared but recently that Congress is limited in its management of the Territories only by natural rights. — Brown, J., in Rasmussen *vs.* U. S. 197 U. S. 516, 531. This, it is true, was the early contention of the American colonists against Great Britain; but we should notice that the outcome of their contention was the establishment of a government strictly confined by law.

by conscious frank design to abandon this principle?

Edmund Burke, the wise and philosophic friend of America, in one way heralded the successful British empire and ridiculed the idea on which as a matter of fact the Americans reared the mighty fabric of a great imperial republic. He cast aside the notion of unchangeable law and of abstract legal right as the foundation of political action: "The spirit of practicability, of moderation, and mutual convenience will never call in geometrical exactness as the arbitrator of an amicable settlement." Let us notice, however, that this Titan among eighteenth century statesmen also declared: "I feel an insuperable reluctance to destroy any established institution of government upon a theory however plausible it may be." But if a government of law is to continue and if we are to have the liberty that comes from law, we need to remember the old classification of the foundations of the state: monarchy rests on fear, aristocracy on ambition, but democracy on virtue.

THE RELATION BETWEEN GENERAL HISTORY AND THE HISTORY OF LAW

By Eugene Wambaugh

DEAN CHARLES NOBLE GREGORY (introducing Professor Eugene Wambaugh): — *Mr. President, Ladies, and Gentlemen*: The most important contribution to the theory of evolution made by America was that of the late John Fiske, of Cambridge, Massachusetts. It was to the effect that the protracted infancy, the long continued helplessness of the human race, was the occasion of the intellectual superiority of mankind over the other animals: that this long dependence of the child knit close the connection in affection and intimacy between parent and offspring and caused the former to transmit to the latter the lessons of life and experience. So the human race hived up its growing wisdom and developed beyond those races which have no such continuity of knowledge from generation to generation. Carlyle said: "My father's life is the sunken pillar on which my life rests." And so it is with us all.

History is the record which transmits from age to age the lessons and events which have passed by; and this noble art and science of history in its broadest sense distinguishes man from the humbler creatures of the earth. This gives it its high place and its dignity, unsurpassed in the whole domain of scholarship. History is as necessary to the race as memory is to the individual; and lacking these there is no learning or progress for the one or the other.

"Law", said Lord Davy, "is the mode of regulating the social life of people in the interest of the community." It is an ancient and beneficent science closely connected with history; and I have often quoted and hope yet to quote D'Aguesseau who justly called the lawyers "an order as old as the magistracy, as noble as virtue, as necessary as justice."

There is one beside me who comes from Cambridge, Massachusetts, from its great and venerable University, and from the very house which was in life the home of John Fiske — a ripe and famous scholar in history, as his wonderful edition of *Coke on Littleton* assures, and one who in the law has never let his minute knowledge and observation impair the breadth of his view or the soundness of his judgment. He was formerly a valued member of our faculty of Law and has always obliged us all by holding this State and this University in kind remembrance. He will speak to us of *The Relation Between General History and the History of Law*. I have great pleasure and honor in presenting to you Professor Eugene Wambaugh of Harvard University.

THE RELATION BETWEEN GENERAL HISTORY AND THE HISTORY OF LAW

That general history and the history of law have close relation can be shown by countless concrete instances; and the subject can be approached from many points of view. The point of view to which I restrict myself is the relation between history and law as shown by an account of the rivalry of the two legal systems — the Roman or Civil Law, and the English or Common Law — which divide between them the task of maintaining public and private rights in almost all countries which are commonly called Christian. To restrict the discussion still more narrowly, I confine attention to Europe and America. Even then I retain a point of view so wide that I must select only a small fraction of the available facts; for even as thus restricted, my subject is the relation between general history and the history of law as illustrated by events of two thousand years.

The discussion does not assume technical knowledge of law. Every one knows that the Roman Law, having had its origin at Rome, spread with the growth of the Roman Empire

to many countries, and that, under the name of the Modern Civil Law, it governs now Italy, France, Spain, Portugal, Germany, and indeed the whole mainland of the continent of Europe, except the Scandinavian countries, Turkey, and that it governs South America and Central America. Every one knows also that the English or Common Law had its origin in Germany, was developed in England, and now governs England, Ireland, and, with some exceptions, North America. Yet it must be borne in mind that whether a country is to be classed as a Civil Law country or as a Common Law country is a question of degree, and that for the purposes of this brief discussion it seems desirable to avoid details and to adopt without comment the ordinary classification.

It is unnecessary to describe fully the differences between the two systems. The chief feature of the Roman Law is the emphasis laid upon the importance of obedience, whereas the chief feature of the English Law is a recognition of the value of individual independence. This point is capable of long discussion. For the present, I can simply remind you that the English Law, by having a jury, calls in the common people, so to speak, as a party to judicial transactions, even of a civil nature, and that the English Law does not — save in Chanc-

ery, where the procedure is derived from Roman sources — command the private citizen in a civil case to do anything or to leave anything undone, but simply commands a public official to seize property, sell it, and pay out the proceeds in a certain way, and that the English Law has many safeguards — perhaps too many — for the criminal. Further, the English Law requires the judge to disregard irregular acts of the executive department, and lends itself easily to that American development of constitutional law which requires the judge to disregard irregular acts of the legislature also, whereas the Roman Law, even when its famous maxim that "Whatever pleases the Emperor is law" is translated into modern language by substituting for "the Emperor" the words "the government," gives a much modified conception of the relation between the government and the citizen. Yes, though neither system of law makes a citizen either wholly independent or wholly servile, the Roman Law lays emphasis on obedience and the English Law lays emphasis on independence.

The rivalry of the two systems for the mastery of the civilized world can be traced back, as I have intimated, two thousand years. The Roman Law can be found at a still earlier date — the date of the earliest of the Twelve Tables,

451 B. C.[1] The English Law, however, does not become known until the time of Roman contact with the Germans. Thus it happens that the earliest date in the history of the English Law is 55 B. C.

There are three reasons why that later date is memorable for Englishmen and Americans; and these reasons illustrate the relation between general history and legal history, and are especially important in tracing the rivalry between the Roman Law and the English Law. In 55 B. C., as a mere incident of Roman conquest, Julius Caesar acquired that knowledge of Germanic custom which enabled him to insert in his *Commentaries on the Galic War* the description which is still used as the beginning of English constitutional and legal history. Again, in that year Caesar, for the first time succeeding in crossing the Rhine, was driven back by the Germans, and thus the infant Common Law escaped the danger of being destroyed and superseded in its first home, the secluded corner where Denmark juts out from the mainland of Europe at a right angle. Finally, in that year Caesar, attacking for the first time Britain,

[1] There are differences of opinion as to the accuracy of this date and of other dates used in this address; but the differences of opinion are not so serious as to be of interest for the present purpose, and consequently the dates given in ordinary books of reference are repeated herein without comment.

failed to make a conquest; and thus the Common Law, as yet scarcely born, was not deprived of the possibility of occupying what by and by became its second home. Caesar, it is true, was not wholly discouraged by these two failures, and shortly afterwards made further attempts upon both Britain and Germany; but the results were much as before, and 55 B. C. stands without competition as the important initial date in the history of the Common Law — the year when it was determined that neither the first nor the second home of that system should be a part of the vast region by Caesar permanently brought within the power of Rome, and the year when the Roman and the Germanic systems, so far as they existed, being first brought face to face in the presence of a skilled statesman and observer, may be imagined, by a sort of personification, to have learned of each other's existence and to have become consciously rivals for the control of men of European descent throughout all time.

The Germanic system, as already intimated, had been but slightly developed in 55 B. C., although enough existed to attract the attention of Caesar; but the Roman system had left its days of infancy behind, and, in the very time of Caesar, it seems, was taught much after the fashion in which law was until recently taught

in American law offices, as one can learn from a diligent student and practitioner of that day, Cicero.

As Caesar was primarily a statesman and only secondarily a soldier, doubtless he appreciated that the real purpose of war was to enlarge political influence and to extend civilization; and unquestionably he knew before the fact, quite as well as we knew after the fact, that the result of his conquests would be to extend throughout western Europe the Latin language, the use of Roman models for literature and art, and the use of the Roman Law, and that there would grow up, as time passed, a development of the Roman Law in harmony with the needs of later times — in short, the Modern Civil Law. Yet even Caesar could not foresee that his conquests paved the way for the rapid spread of Latin Christianity, and hence for the rise and dissemination of the Canon Law, a system based upon the Roman Law, nor that his failure to conquer Germany and Britain left an opportunity for the growth of the great force, the Common Law, which was to hold back from the supremacy of the Roman Law — that most permanent relic of the Empire — a great and growing fraction of the world.

Today what for Caesar could have been, at the most, prophecy, lies open before us as his-

tory; and as we know that in the regions added to Rome by Caesar the local systems of law were to a great extent destroyed and the Roman system substituted in their place — such a change of systems, indeed, always occurring even now when people of decidedly inferior civilization are conquered — we have no room to doubt that a decisive victory for Caesar in either Germany or Britain would have terminated the race between the Common Law and the Civil Law at the very beginning.

Before we come to another date of vast importance, centuries pass. It is true that just before the birth of Christ, and also a generation thereafter, there were renewed attempts, in the reigns of Augustus and Tiberius, to conquer Germany — attempts to which we owe the elaborate description of Germanic institutions by Tacitus; — but these were ultimately as unsuccessful as those of Caesar. It is true too that in A. D. 43 the Romans gained such a foothold in Britain as to erect it into a Roman province — a conquest followed by Roman occupation for almost as long a time as that which has today elapsed since the discovery of America, and threatening, as is obvious enough, to fasten the Civil Law upon Britain with such firmness as to render the country a wholly inhospitable and impossible home for the Common Law. Yet for

reasons not yet fully discovered, the Romanization of Britain was incomplete, and thus, almost by a miracle, as it seems today, the Common Law remained for Britain a possibility. In or about 411 A. D. the possibility was strengthened; for then the Romans abandoned Britain. That abandonment, it should be borne in mind, was caused by the pressure which men of Germanic race were bringing to bear upon the Romans in other parts of the Empire — the Huns, the Goths, and the Vandals being unconsciously saviours of Britain and promoters of the Common Law.

The next date of undeniable importance in the history of the rivalry between the two systems is 449, the famous year when the possibly mythical Hengist and Horsa led the first Teutonic settlers from the first home of the Common Law to England. At that time Germanic Law was a very scanty and simple affair — as can be seen from the almost contemporaneous relics of the Salian Franks — and was grotesquely incapable of comparison with the Civil Law, which was already represented by a vast, acute, and polished literature worthy of comparison with the English Law of the present day, and was a few years later to be embodied in the Institutes, Digest, and Code of Justinian.

Let us ignore for a moment the chain of chronological sequence; and, in order to compare the relative maturity and elegance of the two systems at the time of their early rivalry, let us examine a few quotations.

First, notice some extracts from Papinian, the celebrated Roman lawyer, who is said to have been at one time a judge in Britain, and who died in 212. Notice with what clearness and in what a modern tone these passages from Papinian are phrased. [1]

Take the following short statement of a Roman distinction much like our distinction between law and chancery: —

The strict Civil Law is the law which is derived from statutes, plebiscites, decrees of the Senate, enactments of the Emperors, or the authority of those learned in the law. Equity — Praetorian law — is that which was introduced by the praetors in order to aid, supplement, or amend the strict Civil Law, with a view to the public advantage. — D. 1, 1, 7.

Now take Papinian's statement of a case: —

An agreement was made between debtor and creditor that the creditor should not take on himself the burden of paying the tax due on land which he held as security for the debt, but that that duty should fall on the debtor. I gave the opinion that this agreement was not binding, so far as the treasury was concerned, as it was not allowable

[1] The translation is, with slight modification, that found in Monro's *Digest of Justinian, Translated,* Vol. I, pp 4, 5, 125, 138.

that a regulation of revenue law should be stultified by agreements between private persons. — D. 2, 14, 42.

Now add Papinian's statement of another case: —

The vendor of an inheritance, after assigning his rights of action to the purchaser, made a compromise with a debtor to the inheritance, who was not aware of the sale. If the purchaser of the inheritance should take steps to enforce the debt, the debtor must be allowed in virtue of his ignorance, to plead by way of *exceptio* that the matter was compromised. — D. 2, 15, 17.

Let us turn to a few quotations from early English Law — the Laws of Ine, King of Wessex from 688 to 725. Notice in these extracts the evident allusion to the doing of justice by private force; and bear in mind that the absence of business problems and the presence of statements as to thieves and cattle characterize all early Germanic laws.

Here then are a few extracts from the Laws of Ine: — [1]

If anyone takes revenge before he demands justice; let him give up what he has taken to himself, and pay the damage done, and make "bot" with 30 shillings. — Cap. 9.

If a thief be seized, let him perish by death, or let his life be redeemed according to his "wer!" — Cap. 12.

If anyone cut down a tree under which 30 swine may stand, and it be discovered, let him pay 60 shillings. — Cap. 44.

[1] The translation is that found in Thorpe's *Ancient Laws and Institutes of England*, Vol. I, pp. 109, 111, 131, 141, 143.

A cow's horn shall be worth 2 pence; an ox's tail shall be worth a shilling; a cow's shall be worth 5 pence; an ox's eye shall be worth 5 pence; a cow's shall be worth a shilling. — Cap. 59.

Let this collection of extracts close with King Ine's treatment of an interesting hypothetical case as to one person's becoming surety for the appearance of another person, as follows: —

When a man is charged with an offense, and is compelled to give pledge, but has not himself aught to give for pledge; then goes another man and gives his pledge for him, as he may be able to arrange, on the condition that he give himself into his hands, until he can make good to him his pledge. Then again, a second time, he is accused and compelled to give pledge; if he will now continue to stand for him who before gave pledge for him, and he (the last accuser) then imprison him; let him then forfeit his pledge, who had before given it for him. — Cap. 62.

These extracts show how superior in form the Civil Law was to the Common Law, especially when one bears in mind that the extracts from Papinian antedate those from King Ine by at least four hundred years. Surely if this small David of the Common Law was to conquer the Goliath of the Civil Law, there must have been some very superior pebble in the sling.

Let us now resume the chronological narrative, returning to the year 449, when the Common Law unconsciously emigrated with Hengist and Horsa. Once at home in England, the Common

Law seemed well protected against encroachments of the law of Rome; for then, as now, the Channel was for some purposes very wide indeed, and as successful an insulator as those hundreds of miles of forest which had aided in protecting from Caesar the first home of the Angles. It was not, indeed, from the remnants of Roman imperial power that the Common Law of England had occasion to fear displacement. No, there was a newer and stronger force, one to whose zeal the Channel imposed no permanent obstacle — in short, the Christian Church.

For the present purpose the important point to bear in mind is that the church used throughout the world a system of ecclesiastical law which in form and in substance was developed from the law of Rome. It was a serious matter, then, when in 597 St. Augustine planted Christianity in England and brought the rough Common Law face to face with a more polished system. The learned ecclesiastics, in the midst of an illiterate and uncivilized community, and in the presence of a system of local law, primitive, to say the best of it, and barbarous, to say the worst of it, insisted, naturally enough, upon a large jurisdiction for their ecclesiastical courts, so that these courts might deal with ecclesiastics — and the term ecclesiastic became very liberal, indeed, in its application — even in cases not at all of an eccles-

iastical nature — whence our expression "benefit of clergy." Again, the ecclesiastics acquired for their courts, no matter who were the parties, jurisdiction over certain subjects as to which the English Law was unquestionably deficient, especially wills and the administration of the estates of deceased persons, a matter largely dealt with in England by so-called ecclesiastical courts until 1857, and even now in some parts of the United States dealt with in an ordinary's court — a title which reminds us that formerly in England this jurisdiction belonged partly to the Ordinary, the Bishop. Still again, the ecclesiastics, as the representatives of learning and of order, became the officials of the very courts dedicated to the administration of the Common Law — whence one important official in such a court still bears a title — clerk — indicative of the fact that once his predecessors were clerics. It would be unjust to refuse to recognize the services which for centuries the ecclesiastics performed for law in England; but surely enough has been said to render it clear that the advent of Christianity was dangerous to the permanence, pre-eminence, and individuality of the Common Law. Indeed, 597 marks the beginning of at least six centuries of rivalry, upon English soil, between the Common Law and the Roman Law, the latter being per-

sonated by its most influential representative at that time, the Canon Law.

Here is a place where general history takes up the story, showing that for at least six centuries the chief feature in English history was the question whether the crown of England should be a mere fief held from the Pope of Rome, and incidentally whether, as a mark of such suzerainty, there should lie an appeal from English ecclesiastical courts to the Pope. General history, thus giving the main plot, so to speak, of this great historical drama, has not given, and has hardly needed to give, the underplot, the fact that the fate of English Law attended upon the fortunes of the other more prominent but not more important series of events.

And now let us give a few moments to some of the steps in that mediaeval contest. In 1066 William the Conqueror, his cause blessed by the Pope, subdued England. Coming under such patronage, and coming also from a continental region long subject, as least nominally, to the Civil Law, William the Conqueror might well have been expected to be counted as one of the champions of the Roman as against the English system. Yet in truth he meant to be sovereign — and that may well have been one of the reasons why he was eager to escape from his nominal

subjection to the King of France and to try his doubtful fortunes in England; — and he had no intention whatsoever of becoming a vassal of Rome, as the Pope soon learned, for William wrote to the Pope thus: "I refuse to do fealty, nor will I, because neither have I promised it, nor do I find that my predecessors did it to your predecessors."[1]

Indeed, for William, England represented the possibility of independence, and, despite the fact that then and for long thereafter there were annexed to the English crown large territories in France, no man has ever lived who has done more to promote the insularity of England. Nor was there any essential difference between Saxons and Normans in their attitude toward law. The Normans had only recently become subject, theoretically, to the Roman system then prevalent throughout France in both civil and ecclesiastical courts. They were by reason of their Scandinavian origin, much more closely allied to the English people, in blood and in thought, than to most of the dignitaries of the Roman church. They permitted the ecclesiastics to manage the courts, almost necessarily, because as yet there was no other class of learned men, but the Normans did not overthrow the old legal system of England. Thus it happens that the conquest

[1] McKechnie's *Magna Carta*, p. 21.

by the Normans ranks in the history of law as a victory for the English, being, apparently, the only possible means by which all England could be united into a strong body possessing both the will and the power not to give up the insular legal system, the Common Law.

Not stopping to comment upon the political contest between church and state — a contest rendered unusually interesting because of the diverse characteristics of the persons prominent in it, Henry II, Thomas à Becket, John, — let us notice the danger which threatened the English Law by reason of the new vigor which the Roman Law, in its two forms of the Civil Law and the Canon Law, assumed soon after the Norman conquest. It was in 1135 that the Digest of Justinian, according to the mythical story, was discovered at Amalfi. What is certain is that in the twelfth century there was a revival of legal learning in western Europe, evidenced in many ways, of which but three need be named: the beginning of the teaching of Civil Law at the University of Bologna, under Irnerius, the introduction of the same study at the University of Oxford by Vacarius, and the promotion of the systematic study of the Canon Law through the appearance of the Decretum of Gratian. Clearly, it was necessary that a literature should be promptly developed by the English Law also. The twelfth

century saw that literature begin with Glanville. Early in the next century happened an event still more important, for in 1215 one clause of Magna Charta provided that the Court of Common Pleas should no longer follow the King in his journeyings, but should always be held in one place. The creating of a center for the English Law — for the Court of Common Pleas was the court in which were tried the cases most characteristic of that system, including litigation as to land — naturally caused the rise of a class of persons specially learned in the system. Soon we find the first proofs of the existence of the Inns of Court, those learned societies which banded the lawyers together and also served as law schools. Almost at the same time with the Inns of Court, came the enlargement of the usefulness of the English Law by the devising of new original writs in the time of Henry III, and by the famous statutes of that reign and of the reign of Edward I; and almost simultaneous also were the writings of Bracton, the disappearance of ecclesiastics from the judgeships of the Common Law courts as distinguished from Chancery, and the beginning of that great series of Common Law reports, the Year Books. The Canon Law also had an increasing literature; but the new vitality of the English Law was not to be quenched. In 1234 Henry III prohibited the

teaching of the Roman Law in London. In 1235, upon a request of the Bishops for a slight amendment of the English Law in accordance with the Canon Law, it is said in the Statute of Merton, (20 H. III, c. 9) that "all the Earls and Barons with one voice answered, that they would not change the Laws of the Realm, which hitherto have been used and approved."

The end of the contest between the Roman Law and the English Law in England had not yet come; but it is hardly worth while to go into detail. What happened was that, largely through the Canon Law, the Roman Law left a permanent and important mark upon the procedure of Chancery, Probate, and Admiralty — as was inevitable for several reasons, one being that usually the judges in Chancery were ecclesiastics down to the time of the discovery of America — but that as to all other matters, whether of procedure or of substantive law, the Common Law retained supremacy, and maintained an almost independent development. The Year Book cases and the lectures at the Inns of Court on peculiar statutes of England soon resulted in a legal literature wholly free from a Roman tinge. It is not a mere coincidence that simultaneously with the appearance of this legal literature — a literature, by the way, then and long afterwards, largely phrased, not in English,

but in so-called Law French — there was a development of English prose and poetry, a resultant of the new independence of English thought — that few years separated the lives of Wicliff, Chaucer, and Littleton. Possibly it is not wholly irrelevant to notice that Wicliff wished the Common Law to replace the Civil Law in the universities, and that Chaucer was a member of an Inn of Court.

The rise of English independence as to legal literature came none too soon; for towards the end of the fifteenth century — in the very midst of the time of Littleton, the first author to express the English Law in wholly non-Roman phrase — came upon the continent a new revival of learning as to both the Civil Law and the Canon Law.

The date of the discovery of America is approximately the date of the final settlement of the respective boundaries of the Roman Law and the Common Law in Europe. Notice how many events of interest as to European law occurred within a comparatively short time. In 1453 the capture of Constantinople by the Turks swept back the Roman Law from the east and established Mohammedan Law as the system of a vast part of eastern Europe. In 1495 the formal reception of the Civil Law in Germany fixed the system prevalent to the present day in all the

Teutonic countries south of Denmark. In the countries whose languages, because of descent from the language of Rome, are called Romance — Italy, Spain, Portugal, and France — there had long been a preëminence of the law of Rome. In Scotland, also, that system had a footing — for reasons upon which I cannot dwell — being combined with ancient local customs in a manner which renders the Scotch Law unique. In England, Wales, and Ireland alone did the Common Law maintain supremacy. At that time a map for lawyers, marking the Civil Law countries with purple and the Common Law countries with red, would have assigned the Roman purple to much the larger part of the civilized world, and would have made the Common Law appear a mere insular peculiarity.

Yet, almost simultaneously with the closing of the fifteenth century, something was happening in general history which was destined to unsettle that ratio of the two systems; for the year 1492 must not be forgotten in any list, however short, of the dates important in the history of law — that year when a new world was called into existence to perpetuate, or to reverse, as chance might declare, the relative importance of the law of England and the law of Rome. At first chance seemed to favor the Roman Law. America was discovered by a native of one of the

Civil Law countries, sailing as a representative of another country which used the same system, and taking possession of the new hemisphere in the name of the Pope, the official head of the Canon Law, that system which, as has already been pointed out, was for centuries the most pervasive and persuasive force whereby the Roman Law was extended.

It is easy to imagine that the Roman Law and the Common Law almost consciously entered into a race for the winning of the new field — the old fields having been lost or won. According to the principle then current, discovery gave jurisdiction. As the first discovery was in the interest of a Civil Law country, Spain, the first law theoretically in force anywhere in America was Spanish. Within two years the Pope had divided the new world, discovered or to be discovered, between Spain and Portugal — two countries using the Civil Law. Soon, however, the English Law had its representatives at the front; for in 1497 came the first voyage and discovery by the Cabots, the first step, according to the notions of that time, to give some American jurisdiction to the Common Law.

Yet, whatever may be taught by theory, the law to prevail in any region depends not upon discovery, but upon settlement. Whether men

think about the law or not, they necessarily carry their law with them; for law is a general rule of conduct which because of justice or convenience or habit has become second nature. We change our skies but not our law. Hence priority of discovery was really of consequence in no other way than as indicating possible priority of settlement.

It is important, then, to notice that the settlements in South America and in Central America, down to recent years, were made exclusively by Spain and Portugal, and that thus those regions were soon inevitably assigned for all time to the law of Rome. In North America, however, there has been no such monotony in the history of settlement and of law.

In North America the order of settlement, as regards settlers from Civil Law countries and settlers from Common Law countries, was much like the order of discovery. Thus the first permanent settlement in North America, 1565, was Spanish; and it is pleasant to notice that this settlement bore a name not inappropriate for a pioneer attempt of the Roman Law to capture North America, for by a coincidence it was the name of the missionary who brought Christianity and ecclesiastical law to England a thousand years before — St. Augustine. Next came in 1604 the French settlement at Port Royal in

Nova Scotia; and in 1605 came the Spanish settlement of Santa Fé, New Mexico. Thus far the Civil Law countries had been alone in settlement.

Next, in 1607, came the English settlement at Jamestown. This was the first actual introduction of the English Law upon this continent. In 1613 came the first settlement upon Manhattan Island; and as this was a settlement from Holland, here was a step forward for the Civil Law. In 1620 came the settlement at Plymouth, which, although the Pilgrims had lived long in Holland, and although they meant as far as possible to have no rule but the Bible, must be counted a step towards the supremacy of the English Law; for the Pilgrims had not absorbed the system of Holland, and, as time passed, they found the impossibility of ignoring the system of legal doctrine and procedure to which they and their ancestors had been born. In 1638 came a Swedish settlement on the Delaware— which, though not from a strictly Civil Law country, was soon to pass under the control of Holland.

Thus in 1650 a map of North America from the lawyer's point of view would have assigned to the Common Law Virginia and a part of New England, and to the Civil Law the remainder of the coast from Key West to Labrador.

In 1664 came a change, for then New Amsterdam surrendered and all North American terri-

tory theretofore subject to Holland passed to England. So short and slight had been the Dutch occupation, that substantially no trace of Roman Law was left in those regions. In 1699, however, the Civil Law did much to retrieve the loss, for in that year Louisiana was settled by the French, and the whole range of territory from the central part of the shore of the present State of Maine, eastward along the coast, then westward along the St. Lawrence and the Great Lakes, and then southward along the watercourses of the Ohio and Mississippi valleys to New Orleans, soon held a line of French forts and settlements, separated by vast spaces in which no European dwelt, and in which no Europeans but Frenchmen were ever seen. Surely there was promise that New France would be the North American power of the future, and that the Civil Law would confine the Common Law to a narrow region in America, just as in Europe.

Yet European wars were soon to prove fatal to French prospects in America. In 1713, by reason of the War of the Spanish Succession, Nova Scotia and Newfoundland were ceded by France to Great Britain. In 1759 the battle on the Plains of Abraham caused the surrender of Quebec, and broke French power throughout Canada; and in 1763, the Seven Years War — the French and Indian War of American history

— terminated in the cession by France to Great Britain of nearly the whole of the present British possessions in North America — a vast victory for the Common Law, although in the Province of Quebec the Roman Law had gained a foothold which it retains still. Simultaneously it was discovered that in 1762 Louisiana had been ceded by France to Spain; but this transfer from one Civil Law country to another is of little importance from the present point of view, and the same is true of the re-transfer of Louisiana to France in 1801 by reason of the Napoleonic wars. Somewhat more important was the temporary supremacy of Great Britain in Florida, from 1763 to 1783, in which latter year Florida was returned to the control of Spain.

With the nineteenth century began for the English Law in America an unbroken period of advance. In 1803 came the Louisiana purchase from France, giving to the Common Law a new area from the Mississippi to the Rocky Mountains, save that in the present State of Louisiana the size and age of the previous settlement rendered it inevitable for the Civil Law to retain supremacy. This cession of Louisiana by Napoleon — one of the most spectacular events in the history of law — recalls the appearance of Caesar at the beginning of the rivalry between the two systems, especially since Napoleon like Caesar

was a statesman as well as a general. We know from Napoleon himself that he foresaw some of the results of this cession; and doubtless he saw them quite as clearly as did the other most conspicuous figure in the transaction, Thomas Jefferson. By way of digression it may be said that in one other way Napoleon placed his mark upon the history of law; for from 1804 to 1810 appeared, through his initiative, the Code Napoleon, the systematic presentation of modern Civil Law which had such wide influence throughout the world. By way of further digression, let it be added that a few years ago, when the Code Napoleon was honored in France and other Civil Law countries with centennial festivities, the lawyers of countries devoted to the Common Law knew but little of this celebration, so diverse today are the literatures of the two systems and the thoughts of their practitioners.

The other Common Law victories of the nineteenth century can be told briefly. In 1819 Spain ceded to the United States Florida, in whose law, oddly enough, there seems to be no important remnant of Rome. In 1836 Texas became independent of Mexico, passing into the United States in 1845, with a mere trace of Roman Law. In 1848, California by reason of the Mexican War, was ceded to the United States, bringing so little Roman Law that in 1906 the

California lawyers after the San Francisco earthquake and fire felt compelled to consult foreign counsel as to the effect in Civil Law countries of judgments obtained in American courts against European insurance companies. Again in 1867 came the purchase from Russia, a country with a modified Civil Law system, of Alaska, then so thinly settled that the Common Law has absolute sway. Thus, long before the century ended, the North American continent had passed within the control of the Common Law, save only the Province of Quebec and the State of Louisiana.

Imagine the map of North America to be colored with purple for the Civil Law, and with red for the Common Law, and compare the map for 1650 with the map for 1900; and you will see in those two maps the march of North America from the Roman Law to the English Law.

It is indeed a change that cannot be ignored or forgotten. For all time the names of the representatives of the Civil Law countries must remain with Americans as reminders of what was and of what might have been; for even the most hasty historian and the most scanty history must mention Columbus, Americus Vespucius, Champlain, Marquette, Joliet, La Salle, Montcalm.

At the end of this rapid sketch of two thousand years of rivalry, let us for a moment recall the long procession of diverse figures who have had something to do with the result — some of them already named by me, and others easily supplied. First came Caesar and the nameless Germans who held him back from the earliest home of the Common Law, then the nameless Britons who kept Caesar from depriving that law of the opportunity to occupy its second home, then the Huns and Goths and Vandals, then Hengist and Horsa, then St. Augustine, then William the Conqueror, then John and the Barons, then Henry III and Edward I, and the law writers of the era that ended with the fifteenth century; and, when the scene shifted to the new hemisphere, came Columbus, the Cabots, Americus Vespucius, the French, the Cavaliers, the Dutch, the Pilgrims, Montcalm and Wolfe, Napoleon and Jefferson — the last named being, it is interesting and important to notice, the first lawyer to appear in an executive capacity at any point in the long record. Is not that list of names enough to prove that there is an intimate connection between general history and the history of law? That was my thesis; and here my duty as a narrator of history ends.

THE ROMANCE OF MISSISSIPPI VALLEY HISTORY

By Reuben Gold Thwaites

PRESIDENT PETER A. DEY (introducing Dr. Reuben Gold Thwaites): — Those of you who listened two years ago to the speaker of to-night, and heard the story of the Indian woman who led the Lewis and Clark Expedition through the passes, valleys, and gorges formed by the streams that make the headwaters of the Missouri and of the Columbia, have learned something of the romance of the Rocky Mountains. To-night you have the opportunity to learn something of the romance of the Mississippi Valley. Ladies and gentlemen, I am pleased to introduce Dr. Reuben Gold Thwaites, Superintendent of the State Historical Society of Wisconsin.

THE ROMANCE OF MISSISSIPPI VALLEY HISTORY

We may as well acknowledge that only the few read history as a recreation. To the world at large, the picture of the Past will always be dim, save as illumined by the masters of romance. Their presentation is often false in portraiture, incident, perspective — facts being more or less distorted to suit the whim of the artist; but, although lacking in accuracy, their tableaux are popularly accepted as true, and so vividly painted are they that historians seek in vain to correct them.

The history that lives in our memory, that permanently appeals to our imagination, is in large degree the history portrayed by our novelists and poets. Scotland lives for us in that region of fancy depicted by Burns, the Waverly Novels, and "Kidnapped." Ireland would practically be unknown save for Lever, Moore, and Lover. England will ever be the stage whereon walk the characters of Shakespeare, Fielding, Dickens, Thackeray, Bulwer-Lytton, Wordsworth, and Tennyson. Our France is the land of Dumas, Hugo, Balzac, and Zola.

It is the fashion for most historians, devotees as they are of scientific exactness, to decry this tendency of the masses to take their chronicles in the sugar-coated form; they declare that history warped to the purposes of romance is worse than no history at all. But I, for one, am somewhat inclined to differ with my sober-minded colleagues. I see great value in romance as a hand-maiden of history — provided always that the romancer be honest, and adept at his craft. If forsooth John and Mary take not kindly to the history of the historians, then am I quite content that history should serve as a framework for the romance that they will accept. Historians there are, such as Motley, Prescott, Parkman, Gibbon, Macaulay, Guizot, who with lofty imagination and consummate art reconstruct the stage of history, re-dress and re-people it, so that one may contemplate as through an open window the pageant of the Past. The clientèle of chroniclers such as these, is wider than the circle of admiring friends who applaud the thesis of the latest candidate for the doctor's hood. Yet after all, men and women who know well even their Gibbon and their Parkman, constitute a small fraction only of that restricted group of human beings whom we dub "cultured." To the multitude, the "Rise and Fall" either of Rome or of New France is and ever will be caviare.

If then we would have awakened in the mind of the man of the street and of the club an intelligent appreciation of the impressive lessons taught by the world's experience, let us welcome right heartily good historical romance, and patriotic verse that has the proper ring. The novelist and the poet being the real teachers of history to the masses, we must needs seek to instruct these inspired interpreters, to direct them to the salient points in our nation's annals, and be exceeding glad that they have the God-given faculty of attractively clothing our dry bones of facts with flesh and blood, and of so endowing them with the breath of life that they walk freely in the market place.

In the field of American history, the romantic period of Colonial and Revolutionary life has of late years attracted the attention of many poets and novelists, some of whom reveal genuine power; their works have been eagerly read by hundreds of thousands to whom history as history possesses few charms. The undoubted result has been a general quickening of patriotism, a stirring of the national consciousness. Much of the Atlantic sea-board has now become recognized as a storied land. A steady throng of pilgrims dwells with enthusiasm on scenes associated with the doughty heroes of historical

fiction, and incidentally worships at real historic shrines.

The vast plains of the trans-Missouri, the Rocky Mountains, and to some extent their western slopes, have also found their singers and their tellers of folk-tales. Bret Harte, Joaquin Miller, and a score of imitators and successors, have made this a region of romance, with whose life and features we, through their eyes, are all of us familiar. But, with a few notable exceptions that will readily occur to you, the history of the great valley of the Mississippi has been neglected by those who practice the arts of fiction.

Records of sales of Middle Western books seem to warrant the conclusion that Americans at large believe the story of our great valley to be of slight significance: that, like "Topsy," the trans-Allegheny simply "growed" — developed in a prosaic sort of way, chiefly as the result of physical pressure from the East for a wider field of activity; that the killing of the Indians, the hewing of the forests, the breaking of lands, and the vulgar commonplaces of the rude frontier as set forth in Dickens's *Notes* and Mrs. Trollope's *Domestic Manners of the Americans* constitute the entire tale; that the Middle West has become interesting to civilized men

only since it has taken on the prosperity and manners of the East.

This is a popular delusion. In truth, no section of our land has a tale of higher import or better worth the telling. There is much yet to do on the part of historians of the Middle West towards the popularizing of their theme. So busy have they been, mining crude ore in new veins constantly opening to their view, that they have not adequately minted their precious metal into the coin of literary commerce.

At the golden jubilee of this still young and ambitious association, which upholds the torch of history here upon the sweeping prairies of our Middle West, other participants in the programme have discussed or are to discuss certain social, economic and political aspects of its past. It seems fitting, therefore, that we devote at least one brief hour to some consideration of the romantic side of its annals, the phase that must and will be insisted upon if Western history is to pass current with the multitude.

The giant stage of our drama is most picturesquely set. The Mississippi majestically sweeps through its valley from well nigh the sub-arctic to the sub-tropic, with broad, winding affluents to left and right, whose headsprings lie afar in the Appalachians and the Rockies, the lofty rims of this monster basin.

Its northern reaches are closely approached by the mighty drainage trough of the east-flowing St. Lawrence; and easy portage paths between the two systems have been followed by man from the earliest historic times. Across the Appalachians, also, communication is facilitated by convenient carries between the headwaters of the Atlantic rivers and those of the West. To the far north, a vast net-work of lakes and divergent streams leads deviously to the Arctic Ocean; while adventurers early penetrated to the Pacific, overland from the Missouri and the far-stretching systems of the Saskatchewan and the Assiniboin.

The first actors on this arena were the most interesting and picturesque barbarians ever encountered by civilized man. Of several linguistic groups, representing hundreds of contestant tribes, they varied widely in physiognomy, speech, habits, and costume, as well as in stages of culture, but nearly all were hunters and warriors of no mean capacity. Wandering hither and yon in the elusive search for food, which in forest or stream often led them far afield, they nevertheless were quick to resent any trespass on their own domain; so that intertribal warfare was frequent, and the political map of the region as shifting as patterns in a kaleidoscope.

At the time of the European discovery, life among the American Indians was in large measure an alternation between hunting and being hunted, between hours of feast and weeks of famine. They were rational humans, in the child stage of development; friendship and strife and joy and sorrow were theirs as well as ours; virtue had its rewards, and vice met with much the same penalties as with us; success or failure was open to each individual, for the village was a pure democracy; there were believers in miracles, and those who scoffed at them; good men and bad, and cowards and brave; heroes and heroines there were, in every walk of life; among them, love wrought both blessing and sorrow, and there was marrying and giving in marriage. It was not exactly the idyllic existence portrayed in the "Leatherstocking Tales," any more than our own work-a-day world is a continuous round of melodrama. Cooper, who set the pace for a thousand imitators, might have wrought more truly had he understood his aborigines as thoroughly as does the modern ethnologist. Worthy novels of real life among the Red Indians are yet to come; the grain is abundant, but not until now has the harvest been prepared.

The advent of the Spanish explorers in our valley was meteoric in its brilliancy, and their departure almost as sudden. The conquest of

Mexico by Cortez had made that hardy adventurer the hero of Christendom, and others sought to rival his splendid achievements. The distressing adventures of Cabeza de Vaca and his three companions, who for eight years wandered through deserts and forests and hostile tribes, while crossing the continent from Florida to the Gulf of California; and the long and fruitless quest among the adobe pueblos of the Southwest for the fabled "seven golden cities of Cibola," culminating in Coronado's romantic expedition, perhaps the most remarkable of modern times — these are hero tales illuminating our annals, and awaiting the glamor of artistic fiction to become widely known of men.

He who seeks rich color, will doubtless find the French régime the most entertaining epoch of Mississippi Valley history. Entrenched with apparent security on the rock of Quebec, New France early dispatched her explorers up the majestic trough of the St. Lawrence. With rare enterprise and bravery they gradually pushed their way up toilsome rivers, along westering portage paths, and far over into the vast-stretching wilderness of the continental interior.

Where are there finer examples of dramatic adventure than the great journey of Nicolet, sent by Champlain into Darkest America to discover a short route to China? Donning his

diplomatic garb of figured damask to meet suppositious mandarins, he encountered only naked Winnebago savages on the inland waters of Wisconsin. What more stirring incident in history than the famous expedition of Jolliet and Marquette to discover the far-away Mississippi, as in stately curves it glided past eroded bluffs and through sombre forests toward the Southern Gulf? or, the fur-trading quests of those masterful adventurers, Radisson, La Salle, Tonty, Perrot, Du l'Hut, and a host of kindred spirits? Is there anywhere a nobler instance of self-sacrifice than the splendid martyrdom of the Jesuit missionaries, who, imbued with the zeal of mediaeval saints for the faith that was in them, often suffered the horrors of the damned?

Establishing themselves, as well, on the Gulf of Mexico, the French sought to connect Louisiana with Canada by means of a thin line of forts along the interlacing waterways of the Mississippi and the Great Lakes. Traders, soldiers, missionaries, professional explorers, and political agents, in due time threaded every important stream in the two great continental drainage systems. The Bourbon "sphere of influence" with the barbarian tribes extended from Athabasca to the Gulf of Mexico, from the Black Hills to Cape Breton. It is not surprising that

with this advantage they should confidently have hoped to hem Englishmen in to the narrow slope of the Atlantic hills, and ultimately to drive them into the sea.

Many a picturesque account of life at the St. Lawrence forts of New France is to be found in the pages of the historian Parkman, and in the novels of William McLennan, Gilbert Parker, and Mary Hartwell Catherwood. We know of the annual trading fleets of canoes and batteaux from the far distant regions of the Upper Lakes and the Mississippi, journeying over a thousand miles to barter rich furs for colored beads and glittering trinkets fashioned in Brittany and Paris. Piled high with bales of peltries, and propelled by gaily-appareled savages and *voyageurs,* with black-robed priests for passengers, the flotillas swept down the broad rivers in rude procession, paddles flashing in the sun, the air rent with barbaric yells and the roaring quaver of merry boating songs. We can hear and see the boisterous welcome from the garrisons of Lower Canada; the succeeding weeks of barter and mad carousal on the strand of Quebec or of Montreal; and then the return of the copper-skinned visitors to the "Upper Country," tricked out in gaudy finery, bearing into the wilderness fresh stores of gew-gaws, and accompanied by another contingent of

traders and explorers — often, also, by Jesuit missionaries bent on showing them, even against their will, the path to the White man's Manitou.

Away off in the then mysterious land of the Far West, were insignificant military outposts, bulwarks of the authority of New France — Detroit, Mackinac, Green Bay, Chequamegon Bay, Vincennes; and, ranged along the Mississippi, Kaskaskia, Cahokia, Chartres, and many another rude bankside fort or stockade, all the way from Lake Pepin to Natchez.

Around each of these little forest strongholds — of logs or of stone, as materials came best to hand — was clustered a tiny hamlet of *habitants*: boatmen, tillers of the soil, mechanics, according to bent or to necessity. At the head of society in this rude settlement was the military commandant — sometimes a worthy scion of the petty nobility, but too often, especially in the later decades, a dishonest braggart, living like most of the officials of New France, upon blackmail and thievery.

Next in social precedence was the Jesuit Father, whose scanty chapel lay just within the gate; he, too, perhaps of noble birth and training, inevitably a scholar, but bound by unalterable vows to a life of toilsome self-sacrifice for the winning of savage souls in these inhospitable wilds. Ever was he coming and going upon long

and wearisome journeys among the tribes, his life frequently embittered by the jealousy of the commandant.

Visiting the frontier fort were always wandering traders, each at the head of a band of rollicking *voyageurs,* jauntily clad in fringed buckskins and showy caps and scarfs, with a semi-savage display of bracelets, dangling earrings, and necklaces of beads. The *coureur de bois,* or unlicensed trader — a career involving considerable risk, because defying the fur-trade monopoly of New France — accompanied by a sprightly party of devil-may-care retainers, was not an infrequent caller, upon unheralded expeditions here and there through the dark woodlands and along sparkling waters. He was in his day the most daring spirit and the widest traveller in North America.

Freely mingling with this varied and variegated company were bands of half-naked, long-haired savages and half-breeds, glistening with oils, and tricked out with paint and feathers. For the most part the boon companions of the French, now and then would they smite their White allies with cruel treachery, suddenly converting into a charnel-house many a self-confident outpost of the far-stretching realm of the great Louis.

Upon this inviting amphitheatre of New France, we find a heterogeneous feudal society, with feudal manners and customs, and a never-ending variety of connections with the Old World — social, political, and mercantile complications being multiplied by the adventurous and diversified aims and pursuits of the colonists, scattered as they were through thousands of miles of savage wilderness.

We have also here an economic and social study of the most fascinating character — on the one hand, a partial adjustment of the tribesmen to the ways of the Whites, their complete conversion from a semi-agricultural people to nomadic hunters of fur for the French traders, their absorption of the worst vices of Europe at the same time that many abandoned nature-worship to become devotees of Christianity; on the other hand, the adaptation of the most polished of Europeans to the conditions of the wilderness, even to fraternizing and intermarrying with the savages, implicating themselves in the internecine feuds of the forest, and at times adopting the dress and methods of their barbaric allies, while conducting a partisan warfare against the borderers of the English colonies. Nobles and peasants, priests and adventurers, soldiers, merchants, artisans, and fishermen, nuns and fine ladies, all mingled freely

in this thrilling tragedy of the old régime. The air quivered with the whisperings of dark intrigue; men and women in rich laces, aping the rotten court at Versailles, played with lives, fortunes, honor, as with dice; the King's favorites, civil and military, from Governor down to wilderness factor, robbed His Majesty's subjects as jauntily as an old-time hero of the English highway relieved my lord bishop of his purse.

Amid much that was sordid and dishonorable — yet undeniably picturesque, as became the age and the people and the free-and-easy frontier conditions under which they lived, and the sad example set them by their exalted highnesses at home — we find an unaffected charm of manner, a flavor of honest chivalry, and such a wealth of stirring incident and unselfish loyalty to duty, as in the recital sets the heart afire.

At last, one fateful summer, the men of the hamlets and wilderness stations, seigneurs and tenants, traders and *voyageurs,* commandants and soldiery, were summoned by Indian runners to hasten to the Lower St. Lawrence, to free New France from the English invaders, whose very existence was to not a few of these forest exiles practically unknown. On the Plains of Abraham many a brave fellow from the Upper Lakes and the Mississippi Valley gave up his life for the *fleur de lis.* But all was in vain,

for the time had come to ring down the curtain on this gallant drama. New France was no more.

The English, however, won only that portion of the great valley lying eastward of the river; upon Spain, France by secret treaty bestowed New Orleans and the trans-Mississippi. English explorers, fur-traders, and settlers from Pennsylvania, Virginia, and the Carolinas had for a full century trespassed on French preserves to the west of the Appalachians, and tampered with the Indian allies of the Bourbons. The temerity of these fearless over-mountain adventurers directly incited the French and Indian War, which had resulted in the downfall of New France. King George now sought in a single proclamation to please the Indians, to cultivate the fur-trade, and to check the dangerous growth of his restless coast colonists, by forbidding them save by royal permission to settle on lands to the west of the mountains. The injunction was idle; the expansion of the English colonies in America proved irresistible. The Great West was theirs, and they proceeded in due course to occupy it.

Contemporaneously with the uprising of the American colonies, began a great transmontane irruption of buckskin-clad borderers from the Atlantic uplands into Kentucky, whither Finley,

Boone, the Long Hunters, and their several predecessors, had led the way. This Arcadia of forests and glades and winding streams and incomparable game was won from savagery only after long years of sturdy warfare. The story of that winning is filled to the brim with picturesque and tragic incidents. Cherokee, Catawba, and Shawnee, moved to vengeance by persistent pressure upon their hunting grounds, fought after their own wild standards and fought well, for what they held most dear; they would have been cravens, not to have made a stand. The White man, pouring his ceaseless caravans through Cumberland Gap and down the broad current of the Ohio, brooked no opposition from an inferior race, for White man's might makes right, and struck back with a fury often augmented by fear. Such is the blood-stained story of our method of conquering the wilderness.

To save Kentucky from the northern Indians, who were being egged on by the British, and who used the forts of King George as rallying points for devastating forays against American backwoodsmen, George Rogers Clark, at the head of that now famous band of Virginia frontiersmen, many of whom were garbed in an airy costume combining that of the Highlander with that of the savage, undertook his

hazardous but successful expedition against Kaskaskia and Vincennes; an event abounding in dramatic scenes that will doubtless live long in American story.

Kentucky having at last quieted the aborigine by crushing him, now entered upon a period of relative prosperity. Down the swift-rolling Ohio, through several decades descended a curious medley of oar- and sail-driven craft, made in the boat-yards of the Allegheny, Youghiogheny, and Monongahela — rafts, arks, flat- and keel-boats, barges, pirogues, and schooners of every design conceivable to fertile brain. These singular vessels bore emigrants eager to found new commonwealths in the bounding West. Hailing from all parts of the Eastern States and many countries of Europe, they came with their women and children, their bundles, their tools, and their cattle — lusty, pushing folk, suffering on the way and in the early years of their settlement privations seldom if ever surpassed among the tales of the border.

And now Kentucky's crops were larger than her population could consume. She needed to convey them to the markets of the world, to barter them for the goods and products of other communities. But Spain held firm control of the mouth of the Mississippi, and of the rich lands beyond the river, upon which our West-

erners were beginning to look with hungry eyes. The federal authorities of that day were slow to realize that the free navigation of the Mississippi was essential to the development of the West. Consequently there was much discontent among the leaders of Kentucky, fomented first by Spanish intrigues, and next by French — for France was at last beginning to display some jealousy of the young republic whom she had assisted into life, and apparently would fain have unofficially rejoiced both in Western secession and in the utilization of the trans-Alleghenians in filibustering expeditions against Spanish Louisiana. Through twenty years of its formative period the West was thus in a state of secret ferment, the full story of which is even yet unrevealed, but gradually is being brought into the light, fit material for historical romance.

Spain, fearing an assault upon her possessions from British Canada, made flattering offers of land grants to those American pioneers who should colonize her territory and cast their fortunes with her people. Many discontented Kentuckians accepted these terms and moved on to Missouri — among them the wandering Boones, who were already sighing for "more elbow room," and glad to be rid of the crowds, to get new and cheap lands, to avoid taxes, to hunt big game, and once more to live an Arcadian

life. I love to picture the great Daniel, transplanted in his old age to these fresh wilds beyond the great river, seated at the door of his little log cabin on Femme Osage Creek, dispensing justice as a Spanish syndic, by methods as primitive and arbitrary as those of an Oriental pasha. Caring little for rules of evidence as laid down in the books, saying he but wished to know the truth, the once mighty hunter oftentimes compelled both parties to a suit to divide the costs between them and begone.

The brief term of the Spanish occupation of Louisiana was in itself rich in picturesque incident. The sparse population in New Orleans and in isolated hamlets clinging closely to the western banks of the Mississippi, was almost wholly French, although in the main officered by Spaniards, who sought somewhat cumbrously to graft a semblance of Spanish law and political machinery upon French ideas and the *coutume de Paris*. George Rogers Clark was much assisted by French-Canadian sympathy and not a little by the officials of Spain; and in the South, our Revolution was strengthened by Spanish expeditions against the British in Florida. But with the coming of peace, it soon became evident that, as her price for these courtesies, Spain aimed at getting Illinois and a large slice of the country lying to the back of the Alleghenies

and abutting on the east bank of the Mississippi. The firmness of the American peace commissioners alone warded off these pretensions, and left the Mississippi as the western boundary of the United States. Five years before the century closed, Spain was induced by treaty to open the river to free navigation by Americans.

By now, an incipient American empire had become established in the trans-Allegheny. Settlement had advanced slowly down the great eastern affluents of the Mississippi, as along the fingers of the hand — the broad and rich valley bottoms being occupied by a crude but hard-headed border folk, although the intervening highlands were as yet left untouched, save as farmer-hunters here roved for game to stock their larders.

In the trans-Mississippi, there was also growth, although relatively small. The fur trade prospered, with St. Louis as its chief entrepôt; on the eastern side, Kaskaskia was a like emporium. Itinerant merchants, usually French, pushed their way to the upper waters of the Mississippi and its northern tributaries, also into the southwest towards the Spanish commercial centre of Santa Fé. By the close of the century French traders had reached the Mandan villages at the great bend of the Missouri, where they came in contact with the agents

of British fur-trade companies, who had journeyed thither from their fortified posts on the Assiniboin and the Saskatchewan.

The great Napoleon had meanwhile risen to power. Reflecting upon the tragic story of the ousting of France from North America, he deemed it possible to rehabilitate New France to the west of the Mississippi, thus not only bringing credit to the mother-land, but checking the United States in its westward growth. Spain was therefore coerced into retroceding Louisiana to its original European owner.

There now came to pass another fateful move upon the political chess-board. Three years later — a war with Great Britain pending, fearful that his arch enemy might seize this new possession, needing money to replenish his treasury, and at the same time thinking to checkmate England by allowing her growing American rival to expand its bounds — Napoleon sold Louisiana to the United States, lacking but a year of two centuries after the first successful settlement of the French in Canada. It was but yesterday that with joyous acclaim we celebrated the hundredth anniversary of this epoch-making Purchase that has helped to make us one of the mightiest nations of the earth. The history of the transaction is today as household words.

But even had not the Louisiana Purchase been made just when it was, American acquisition of the trans-Mississippi was sure to have come. A river is no adequate boundary between nations, if on one bank be a people feverish to cross, and on the other a lethargic folk. The Valley itself, is a geographical unit. Tens of thousands of Americans had by this time descended the eastern slope of the basin, and many had not even waited by the river side for a change in the political ownership of the western. We have seen Kentuckians before the Purchase, on Spanish lands along the lower reaches of the Missouri. The chief increase of Upper Louisiana had in recent years been caused by American borderers. They had settled on French lands near New Orleans; and there was a dense American centre at Natchez. The great Purchase only hastened and facilitated our national progress.

The ever-fascinating and thrilling tale of Lewis and Clark, as under Jefferson's masterly direction they broke the path for American civilization all the long rugged way from the mouth of the Missouri to the estuary of the Columbia, is still ringing afresh in our ears — embellished with new details, but recently brought to view, that make still more brilliant this glowing page in our Valley's history.

While still the great expedition was upon its route, other official explorers were searching the valleys of the Red, the Arkansas, and the Republican, reaching out to Spanish New Mexico, and pushing on over the rich grazing plains of Nebraska and Kansas to the snow-capped peaks of the eastern Rockies. The golden age of American exploration through the newly-acquired Territory of Louisiana, forms a splendid chapter in the annals of our race. The names of Pike, Long, Frémont, Carson, recall many a rare adventure in the cause of science. The records of the great rival fur-trading companies operating in the trans-Mississippi, with their picturesque annual caravans over the Santa Fé and Oregon trails, and the stories of roving bands of trappers and scouts who in following the buffalo discovered mountain passes that are today highways of the world's commerce, furnish thrilling scenes to grace the pages of a thousand romances.

In due time, the narrow paths of fur-traders, trappers, and explorers were broadened by emigrants, who throughout the nation's history have ever crowded toward our Farthest West. The great migration to Oregon, in the forties of the last century, was an event of supreme significance. Bold and restless pioneers, heavily armed, set forth from the older settlements in wagons and on foot, with their women and children, with

herds of cattle and horses, and after slowly traversing the broad plains, painfully crept over the mountain barrier and spread themselves into the verdant valleys of the Willamette and the Columbia.

Soon came the news that gold was discovered in California. Then followed another mighty westward rush over the transcontinental trails — within three years, a hundred thousand men and women from both hemispheres crossed the Mississippi in their mad struggle to reach the El Dorado of Pacific tidewater. Ten years later, the Colorado hills also revealed the story of their hidden wealth. Up the long valleys of the Platte, the Smoky Hill, and the Arkansas, singly and in caravans, wearily toiled tens of thousands from all the corners of the earth, many falling by the way from fatigue, starvation, and the wounds of Indian arrows; yet their experience in no wise checking the human tide that had set in the direction of the everlasting hills.

Overland stages and "prairie schooners" were quickly withdrawn upon the advance of the Pacific railways. The buffalo and grizzly soon disappeared from our Western plains. The Indian, stoutly standing for his birthright, was subdued at last. The cow-boy succeeded the explorer and the trapper. Upon our great rivers, the Ohio, the Mississippi, and the Mis-

souri, the introduction of steamboats, and later the bankside railways, wrought a like transformation. The old river life with its picturesque but rowdy boatmen, its unwieldy produce-laden flats and keels and arks, began to pass away, and water traffic to approach the prosaic stage.

Prosaic, perhaps, because near to our present vision. In this progressive land, however, we are ever living in a period of transition. For example, now that the great northern forests in our Valley have been nearly obliterated, and the day of the lumber raft is for us fast fading, and the "lumber jack" in his particolored Mackinac blouse is about shifting his career to new fields of activity in the South and the Far Northwest, we can realize that he too has been a striking figure on our stage — worthy of a place beside the *coureur de bois,* the *voyageur,* the *habitant,* the buckskin-clad Scotch-Irishman of the Wilderness Trail, the flat-boat man, the scout of the plains, the Rocky Mountain trapper, the Oregon pilgrim, the "forty-niner," and the cow-boy. In our story of the West, also, we must leave many a page for the stout flood of agricultural settlement — in character differing widely from the Kentucky movement of fifty and sixty years before — that poured into the Middle West during the quarter of a century just previous to the

War of Secession. New England and New York, and almost every hamlet of western and northern Europe, sent the choicest of their people. By thousands, they came to found new fortunes on lands recently acquired by purchase from the tribesmen. Our local history is rich in stirring details of their migration, and in particulars of their privations and their hardihood. The pioneers have in the order of nature now all but left us, and we are just beginning to understand that their story is a splendid epic still waiting to be sung.

What may we not say, too, of the part our great Valley played in the war for the preservation of the Union? As in the earlier days of the giant struggle between France and England for supremacy in North America, control of this vast drainage system was hotly contested. Whatever might have been the result of operations on the Atlantic Coast, the power holding the interior valley must surely in the end have won. From the population to the west of the Appalachians came the great bulk of both Northern and Southern armies; nowhere was the struggle more nearly brought home to the people. Song and story will always find abundant theme in our local annals of the war.

Equally important has been the Valley's share in the subsequent development of our

nation — the social, economic, political, industrial, intellectual forces of the interior are today dominating us as a people.

I cannot close my brief and imperfect glance at some of the elements that lend to the annals of the Mississippi Valley romance, dignity, and national significance, without again appealing to my colleagues in the field of Western history, to look more kindly on its narrative side than has of late been the fashion. Documentary evidence is vital; wherever possible it should be the basis of every historical structure, and its presentation falls peculiarly within the province of historical societies like this without which, and the historical seminars of the great universities, I fear that history as a science would soon languish among us. Monographic dissertation is likewise essential, for the instruction of the few of light and leading who sit by the well-springs of knowledge. For well-digested, thoughtful, interpretive historical work there will, I trust, never cease to be demand among men and women of culture, although a distinguished pessimist has recently advanced the contrary view.

My present concern, however, is with the multitude, who will have none of these things, yet who surely must be taught therein before we can inculcate in them a genuine love of country. In the histories of our Valley designed for pop-

ular use, we must utilize not merely the ability to compile facts, to set them forth in orderly array, and to interpret their significance in connection with our larger national history, but with an eye keen for the picturesque we must cultivate that historical imagination which alone may irradiate and humanize the stirring records of our Past. Particularly for our schools should the histories of the West use life and action and color, if we are to remove State and local history from the ranks of unpopular studies, to make it a thing to lure the reader on and invite him to return.

Humanity has ever been popularizing its history, that it may live in the minds of men. Folk lore is but a people's hero tales. The story-teller in the Oriental market place, the bard in Scandinavian saga and in Scottish lay, are in our time represented by the poet and the novelist who, in their own fashion, interpret our history to the people. If they be truly masters of their art, let us courteously bid them welcome to the field of Western story, for their harps alone may make our annals live.

THE AMENDMENT OF THE CONSTITUTION

By Albert Baird Cummins

PRESIDENT PETER A. DEY (introducing Hon. Albert B. Cummins, Governor of Iowa, as President of the meeting): — In looking over the large audience which has assembled to greet the Governor of the State of Iowa, it seems to me that in this place and on this occasion he needs no formal introduction. Governor Cummins will take the chair.

THE AMENDMENT OF THE CONSTITUTION

I esteem it a very great privilege to join in the celebration of the event now uppermost in all our minds. It is worth while to recall from time to time what has been done in the past, not so much that we may kneel at the shrine of antiquity as to equip ourselves to follow worthily in the paths so well marked out by the wisdom, the patriotism, and the righteousness of the men of former days. The pleasure I feel is increased immeasurably when I remember that at this moment we are standing in the presence of the three venerable survivors of the three conventions which formulated and presented to the people the several Constitutions of this Commonwealth. This day should impress a little more deeply on every heart the resolution to be strong enough to direct and to preserve the inheritances which these old men bequeathed to us when they did their work so well fifty, sixty-one, and sixty-three years ago.

I do not intend, however, to speak of the Constitution of Iowa. That will be better done by the speaker of the morning who follows. The

Constitution of Iowa is distinguished chiefly for the character of the men who framed it. On this occasion I want to say a word in regard to another Constitution. Indeed, while engaged in celebrating the anniversary of the adoption of the Constitution of Iowa of 1857 it is a good time to think a little about Constitutions in general and about the part they play in the development as well as in the protection of a mighty people. If, therefore, I am allowed to take a little of the hour devoted by The State Historical Society to the celebration of the Fiftieth Anniversary of the Constitution of Iowa, I would like to call your attention to another Constitution.

Somehow it seems impossible for me to speak on any historic occasion without thinking of the things that are being done as well as of the things that have been done. The State University, with which many of you are connected, has no other object than that of training young men and young women so that they may fight successfully the battles which will inevitably follow. Of such occasions it seems to me that their chief importance or paramount importance lies in the future rather than in the past.

The Constitution of Iowa is not materially unlike the Constitutions of our sister States; but we have a Constitution that is unique among all

the instruments of the world — the Constitution which Gladstone declared to be "the most wonderful instrument ever struck off at a given time by the brain and purpose of man:" the Constitution which directs and governs the mightiest nation upon the face of the earth. It is a Constitution which had no predecessors; and, although it may seem to you that I am not accurate when I declare it, I unhesitatingly say that it is a Constitution which has had no successor. There is nothing like it in all the world when applied to the actual affairs of men. You all know that I refer to the Constitution of the United States. No man can excel or surpass me in veneration for the wonderful effort which gave purpose to that magnificent evidence of the truth of righteous patriotism, the Constitution of our country. Nevertheless, I believe that the Constitution of the United States, though faultless as the supreme instrument of the time, ought now to be amended. And as I am always advocating what I believe to be necessary, I want a minute of time to enroll you in the demand for modification and change or enlargement of the Constitution of the United States.

This organic law of our Nation has among its provisions, a sentence which runs like this: The Congress shall have power "to regulate commerce with foreign nations, and among the

several States, and with the Indian tribes." This is the constitutional sentence upon which, more than one hundred years after its adoption, we are attempting to build the broadest, the most comprehensive, the most magnificent edifice of commercial regulation that the world has ever seen. But there is no student of Constitutional Law in my presence this moment who does not know that years ago we wrested this provision of the Constitution from its original purpose. We have perverted its original meaning until its framers would be aghast if they could see what our people and our courts demand it should mean.

I am not disparaging the legislation that has been founded upon this phrase of the Constitution. It has come from the purest patriotism in the land and from a great people. But the question you and I must determine (and there is no better time than the day on which we meet to celebrate the Anniversary of the Constitution of the State of Iowa for you and me to consider this question) is: Should the Constitution of the United States be amended? Our forefathers never dreamed of the commercial development of the country, for which they provided a Constitution, when they said that Congress shall have power to regulate the commerce among the several States. They were thinking of the freedom

of the several States, and that Congress should have power to see that there were no custom houses along the borders of the States which would prevent a fair exchange among the States.

We have gone beyond the dreams of the men of the ancient days. We need a broader and more general power granted to the Congress of the United States. But we are now trying to found upon this sentence, among other things, a child labor law. Upon this sentence we are trying to regulate the length of time during which those in the employ of common carriers shall render continuous service. A long series of laws have already emanated from the power to regulate commerce among the States. But we can not, even with the wildest stretch of the imagination, make it do the work that you and I know must be done.

I will cite one instance — the regulation of railways. The time has come when we can not separate the regulation of interstate traffic from the regulation of intrastate traffic. It is utterly impossible for the General Government to do justice to the people under the interstate regulation of railways and be fair in leaving the States themselves to regulate local or domestic traffic. So indissolubly joined together are interstate and local traffic that their regulation must be considered and governed by a single

tribunal or by co-ordinating tribunals so that in the end we may have an effective and harmonious system.

This applies to the determination of the laws to regulate the revenues of railways, to regulate the value of railways, and to regulate the amount upon which railways must return a fair and reasonable reward. Will you tell me what determines the value of a great system of railways which in our time begins in one ocean and ends in the other? How shall we take out a few miles and tell what is its worth? It is impossible. I leave you to reflect upon the utter impracticability of ascertaining the cost of the miles of railways in Iowa as distinguished from the cost of the miles outside of Iowa.

I might consume the whole hour in depicting the confusion which oftentimes results from the conflict of powers in business. No State line influences commercial sovereignty. You know as well as I, granting the completest respect and also the highest veneration for the men of the days of 1787, that their knowledge was not of the problems of this hour. Why then are you not doing something to awaken sentiment so that our fundamental charter may be made broader and more comprehensive, so that our laws may be made better for your welfare and safety? Why? Because you are too conservative. Because you

shrink from the work taken up in the ancient days and from the duty of illuminating it with your wisdom.

Sometimes I think conservatism becomes cowardice. It paralyzes the heart so that it can not fight for the honor and welfare and interest of our magnificent country — the like of which the world does not know. Let me say to you younger men that, as much as you love the history of your country, you, too, must play your part in that history if the future of the country is to be as splendid as its past has been glorious and sublime. The men of this generation are just as loyal, are just as careful of the interests of their country and their fellow men as were the men of any generation; and unless you enter into these issues or deal with these subjects as did the men preceding you, you might as well be obliterated from the memory of men. Unless these institutions of learning furnish to their votaries a keener weapon of warfare, a more imprenetrable armor than that worn by the men of the former times, then indeed such occasions as these lose their importance and the liberality of the State of Iowa is without fruit.

Now that we are here to listen to the story of the old days in 1857, to the history of a convention filled with the most noble men Iowa has ever known, I take this opportunity of giving praise

and reverence to the pioneers of the State of Iowa and to the framers of our Constitutions. We owe more than we are aware to these old men who with faithful toil, intelligent minds, and loyal souls have laid the foundations of our laws and the policies of our State. It is a good time for you to determine that you will be worthy of what they did and that when your duty comes to you you will do it as faithfully as they did theirs.

THE CONSTITUTIONAL CONVENTION AND THE ISSUES BEFORE IT

By Emlin McClain

GOVERNOR ALBERT B. CUMMINS (introducing Justice Emlin McClain at the conclusion of his address on *The Amendment of the Constitution*): — It now gives me great pleasure to introduce to you the speaker of the morning, Justice Emlin McClain, who will speak to you on *The Constitutional Convention and the Issues Before It.*

THE CONSTITUTIONAL CONVENTION AND THE ISSUES BEFORE IT

The adoption of State Constitutions by the American States, after the Declaration of Independence, has been made the subject of much historical investigation; and the formation of the Federal Constitution in 1787 has been discussed in every detail, even to the personal history of the men who constituted the convention. But the development of Constitutions in States admitted subsequent to the formation of the Union has not been often considered with very much seriousness or elaboration, for the reason, apparently, that historical students are inclined to accept the view as true in fact, though not in theory, that the States are in effect departments only of the Federal government.

And, perhaps, this is not a propitious period in the course of our great national development for laying emphasis on State institutions. One is easily put down, in the public estimation, as an advocate of the exploded theory of State Rights, if he attempts to attach any great importance to the State; and yet the character of our Federal system, involving not only the obligatory perpe-

tuity of the Union, but also the indestructibility of the States, not only the absolute sovereignty of the Federal government within the scope of the powers delegated to it and in the determination of the extent of such powers, but also the independent sovereignty of the States or the people thereof as to powers not delegated to the Federal government, has been so frequently asserted by even such able expounders of paramount Federal sovereignty as Marshall and Webster that there can be no imputation of adherence to the discredited theory of State Rights in exploiting, on a proper occasion, the importance of local institutions and maintaining that there is a true balance which has been preserved and must continue to be preserved between national and State functions. After the ultimate authority of the Federal government to determine the scope of the powers conferred upon it through the written instrument which is its charter, taking into account the general purposes of its framers, and in finally deciding to what extent public policy dictates that the powers thus collectively granted shall be exercised, has been fully conceded, there remain for the States very important functions of sovereignty and legislation, affecting intimately the welfare of their people.

Indeed, the functions of State governments, while not attracting so great attention in their general exercise as those of the Federal government, do, as a matter of fact, affect more largely the individual welfare than the more striking functions of the general government. The popular tendency to treat as insignificant the institutions of the State, and as of little honor the offices created under its authority, is directly chargeable, in my judgment, with much of the complaint in reference to law and government in general. Whatever may be the possible extension of Federal power, it can never satisfactorily regulate our immediate local affairs. The scope of our national territory is so great, the interests to be considered so diverse, that it will never be practically possible to supersede local institutions and eliminate local regulations, so that the central government can be looked to as the source of legislation as in England or France or Germany.

The conception of the framers of our Federal system of a central government regulating only national affairs, while the governments of the States are allowed to continue paramount in and responsible for local legislation and administration, continues today, as it was when the Federal government was first organized, the sanest and most judicious theory which can be

devised for our people. The serious contemplation by the framers of our national Constitution of the problems to be dealt with by them and by future generations led to the adoption of a system in advance of the popular sentiment of the time, so that it was with the greatest difficulty that a ratification of the instrument was secured; and the exigencies of an immensely larger population, and an immensely greater variety of material interests, has only indicated a larger exercise by the Federal government of the powers conferred upon it. It does not yet appear that there is a general and united public sentiment which would justify an amendment of the Federal Constitution greatly extending in any direction the powers of the central government.

The efficiency of the Federal government in dealing with the problems involved in the discharge of its unquestioned powers has not been such as to give satisfactory assurance that other problems, complicated by differences of local conditions, could be more satisfactorily solved by it than by State governments. It is true that differences in State laws prove extremely inconvenient to those engaged in any form of business involving dealings in different States. To some extent this difficulty can be eliminated by the adoption of uniform laws, as has been done in many States with reference to negotiable instru-

ments, and as it is proposed shall be done with reference to other subjects, such as contracts of sale, bills of lading, and warehouse receipts. But the inconvenience attending transactions extending into two or more States would probably not be thought by a majority of the people to justify the extension of Federal control over business beyond the limits fixed by the Federal Constitution. Congress has been notoriously slow in meeting local conditions, even as to matters within its control, and Federal administration has not always been as effective as within the last few years. Perhaps it is too much to hope that its efficiency has been permanently put upon a higher plane; but even if that result has been achieved it is still to be determined by considerable experience and not merely by the enthusiastic confidence of the moment that it will prove satisfactory. The best attainable is the thing to be striven for, and it is often dictated by experience rather than by theory. If State legislatures have been too quick to respond to the impulse of popular enthusiasm, and have legislated unwisely, it is equally true that the difficulty of compassing the volume of necessary Congressional legislation has been such as to prevent the successful and satisfactory consideration of many measures of great importance.

Therefore the constitutional system of any State is a matter of great consequence to its people, and the history of its development is worthy of careful study; and this commemoration of the formation of the present Constitution of Iowa in 1857 justifies a serious consideration of the problems which confronted and which were successfully dealt with by the constitutional convention which completed its labors on the fifth of March of that year.

It is especially worthy of note at once that the Constitution thus framed, and which the people subsequently ratified, was permanent in its nature. It was framed before the popular agitation as to public affairs and popular distrust of the representatives of the people had attained such magnitude that it was thought necessary to embody in constitutional form matters which in their nature should be the subject of legislation that may be readily amended or repealed if not found to be satisfactory. Notwithstanding elaborate plans for the amendment of a Constitution once adopted, or the substitution of a new instrument in its place, it has been a matter of general experience that changes are made with difficulty; and unless there is some strongly controlling necessity, it would seem wise to leave matters of general legislation to be dealt with by the duly constituted body of representatives elected from

time to time, rather than to embody them in the constitutional instrument. On the other hand, the general principles of government and the recognized limitations on legislative power ought to remain unchanged and beyond the reach of temporary agitation or excitement, for it is easy to overlook the substantial and fundamental principles on which the security of the individual rests on the pursuit of some immediately important end which may for the time being engross the attention of large numbers of people.

Any argument in favor of including general legislation within the provisions of a State Constitution is necessarily based on a distrust of legislative assemblies. But whatever ground there may be for such distrust, there seems to be no good reason for substantially greater confidence in a constitutional convention. The members of the convention are selected by the same electors who choose the members of the legislature; and while the results of the convention must be ratified by popular vote, on the other hand the acts of the legislature may be revised or repealed in ordinary course by the succeeding legislature, selected by popular vote, so that the effective will of the people may be brought to bear in the latter method as effectively as in the former. Any argument that the people cannot secure a legislature which will put into force by suitable laws

the general will of the people, strikes at the fundamental basis of popular government and destroys confidence in Constitutions as well as in laws; for if the people cannot secure proper representation in a legislative assembly, neither can they in the constitutional convention. The usual provision for reference to a vote of the people is feasible as to a simple proposition submitted by way of an amendment, but not effective in securing the popular will as to a particular subject matter when an extensive instrument is submitted for adoption or rejection.

That the convention of 1857 was fortunate on the whole in selecting for incorporation into the Constitution only such regulations and restrictions of governmental power as are fundamental, and therefore permanent in their nature, is shown by the fact that, notwithstanding liberal provisions for amendment and the safeguard of submitting to popular vote each ten years the question whether another convention shall be called to revise and amend the Constitution, it has been amended on only five occasions. These amendments have related to such matters as striking out the word "white," changing the date of the State elections so as to conform to that of the national election and making them biennial, reorganization of judicial districts, reducing the number of grand jurors, a slight increase in the

number of members of the house of representatives, and the prohibition of the sale of intoxicating liquors. None of these amendments, save the one last mentioned, has indicated a desire to further restrict legislative power, and the history of subsequent legislation in the State would lead to the conclusion that the prohibitory amendment, which did not go into effect on account of irregularities in the method of proposing it for adoption, would have been an unwise measure, in view of the impossibility of enforcing any law, even though embodied in the Constitution, unless supported by adequate legislation. The vote each ten years in favor of calling a constitutional convention has been so trifling as to indicate a want of any popular discontent with the Constitution as adopted.

The permanence of the Constitution of 1857 in all its substantial features is due, therefore, not to the difficulty of amendment, as in some States (i. e. Indiana and Nebraska) where a proposed amendment must receive a majority of the votes of those voting at the election at which it is submitted, nor to the inability of the people to indicate their wishes as to a change in the Constitution (as in Rhode Island) which they could do in this State by voting for a convention, but to an indifference which must be attributed to reason-

able satisfaction with the instrument as it has been in force.

In fact, the Constitution of Iowa belongs to a group of Constitutions adopted from 1845 to 1857 inclusive, nearly all of which have remained unchanged to the present time. This group includes the Constitutions of the northern States from New York to the Missouri River, in each of which a Constitution was adopted, though of course not in each case the first Constitution for the State, within that period of thirteen years. And of that group only two, New York and Illinois, have found it necessary to adopt new Constitutions or substantially change the constitutional system. This group of Constitutions represents, therefore, the fully matured constitutional system, without any large incorporation of legislation which requires frequent amendment. Iowa is, indeed, in one sense an exception to this rule, for its first Constitution was adopted in 1846, but the popular demand for a new Constitution was based, on the one hand, on objections to undue restrictions of the power of the legislature to provide banking facilities, and on the other, on the desire for more specific provisions relating to the incorporation, regulation, and promoting of railroad enterprises. These extraordinary emergencies occasioned agitation for constitutional revision, without perhaps any very

definite purpose as to what the change should be, and the Constitution of 1846 was substantially retained, although many changes were made, as to some of which however there was no popular demand for a change which, standing alone, would have occasioned constitutional revision.

The political history of the times apparently had little to do with the agitation for the revision of the Constitution of 1846. The intervening years had been years of intense political activity throughout the country. The agitation as to restriction of slavery, and the entire reorganization of all previously existing political parties indicated that the spirit of political revolution was in the air. The State had been in the control of the old Democratic party, as opposed to the Whigs, from the time of its admission into the Union until the success of the Whigs with the aid of the Free Soil Democrats in electing Grimes as Governor and a majority of the General Assembly at the general election in 1854. But while the debates in the convention indicate as to some subjects great intensity of political feeling between the adherents of the new Republican party and the supporters of Democratic political principles, it is impossible to say that political considerations dictated the result on any question determined by the convention. The supposed needs of the people of a State rapidly growing in

population and wealth was the controlling consideration in determining the action of the legislature and the people in voting for a convention to revise the Constitution of 1846.

The personnel of the convention itself was in some ways significant. Of the thirty-six members (selected from senatorial districts) twenty-one were Republicans and fifteen were Democrats, as against a proportion of fifty-one Democrats to twenty-one Whigs in the convention of 1844, and twenty-two Democrats to ten Whigs in the convention of 1846. The representation of the States as to the nativity of the various members is also interesting, six having been born in the New England States, eleven in the Middle States, nine in the Middle West, and ten in the South; while in the convention of 1846, of the thirty-two members, fifteen were born in the South, eight in New England, four in the Middle States, and five in Ohio; and in the convention of 1844, of the seventy-two members, twenty-six were born in the South, ten in New England, twenty-three in the Middle States, and ten in the States of the Old Northwest, while three were of foreign birth. These figures throw some light on the sources of immigration to Iowa at different stages in its early history, and corroborate

the conclusion drawn from other sources[1] that during the earliest settlement of the Territory, when the easiest means of transportation for reaching its limits was by way of the Ohio and Mississippi Rivers, a very considerable proportion of the settlers came from south of the Ohio; while later, when railroads had covered a portion of the distance from the eastern and middle States toward the Mississippi, the immigration was in a much larger proportion from those States. A similar inference is to be drawn from the fact that of the members of the convention of 1857, who were under the average age, the proportion who had been born in the South was smaller than of those above the average age. The southern portion of the State, settled largely from the territory bordering on the Ohio River, was by far the most populous, and counties were organized to its western limits and represented in the convention, while there were no members whose residences were north and west of the center of the State.

The average age of the members in the three conventions was substantially the same. In none of the three did it exceed forty years. As to occupation, it is noteworthy that in the convention of 1844 there were forty-six farmers and

[1] See article by Professor F. I. Herriott in *Annals of Iowa* for April, 1906, Vol. VII, p. 367.

nine lawyers; in the convention of 1846 there were thirteen farmers and seven lawyers; while in the convention of 1857 there were twelve farmers and fourteen lawyers. This change in proportion as between these two occupations indicates better established and more highly organized communities. On the whole, while the convention of 1857 was made up of comparatively young men, nearly all of them had had previous experience in public life, and were in general well fitted to discuss and mature the provisions which were to be given a place in the permanent charter of our State government; and the instrument which they prepared is inferior in its scope and details to none of those adopted by the States formed out of the Northwest Territory, which had furnished the material to be drawn upon for improvements or additions in revising the Constitution of 1846. [1]

By act of the legislature, approved by the Governor, January 24, 1855, the question of calling a convention to revise or amend the existing Constitution was ordered submitted to vote of the people at the general State election to be held on the first Monday of August, 1856; and on September 10, 1856, Governor Grimes declared the

[1] Many of these data with relation to the personnel of the three conventions are drawn from Professor Benj. F. Shambaugh's *History of the Constitutions of Iowa.*

result of the vote on this proposition to be in favor of the holding of a convention, and ordered a special election to be held in November for the selection of delegates to such convention. The majority of the votes in favor of the calling of the convention had been overwhelming, 32,790 in the affirmative and 14,162 in the negative. In accordance with the act, which provided for the submission of the question to popular vote, the members chosen met at Iowa City, the capital of the State, on the third Monday in January (which was the 19th), 1857, to discharge the duties thus imposed upon them.

While the place of meeting was fixed by the statute and the proclamation of the Governor issued in pursuance thereof, the convention did not consider itself bound to continue in session at Iowa City, and assumed the right, as based on the precedents of similar conventions in other States, to determine where its sessions should be held. Invitations from Davenport and Dubuque to have the convention remove to one of those cities were referred to a special committee, and members in discussion of the question expressed dissatisfaction with the conditions found at Iowa City for the sessions of the convention itself and the accommodation of its individual members. One of the leading members said as to Iowa City that it was "created for the purpose of holding

meetings here, legislatures and conventions, and the people have got into the habit of treating all who come here like sheep who are to be shorn." But he continues: "It is so everywhere. It is proverbial that in state capitals persons receive harder treatment and less accommodation than at any other place. Now we have the power to avoid all this, and we ought to exercise it. Let us show that we have at least the instincts of the lower animals, to flee from danger and hard treatment." Another member had understood the proposition from Davenport to include not only a free hall for the use of the convention, but free board for each member, and he admits that he was favorably impressed with this proposition, which included also a free ride over the railroad to the new place of meeting. But after thus expressing his appreciation of the generosity of this offer, he indicated his conclusion that the convention ought to remain at Iowa City, and from his own experience contradicted the statement which had been made by some other member that they would be obliged to sleep "three in a bed and two in a bunk." The fact appeared finally to be that Iowa City was greatly crowded by the presence of the members of the General Assembly then in session, and that rather inadequate accommodations for the sessions of the convention were to be had in the Capitol building for

the same reason. But it further appeared that the only railroad by which the members could go to Davenport or Dubuque was blockaded with snow and the removal would occupy at least a week, and as it was assumed that the business of the convention would not occupy more than two or three weeks the necessary delay involved in a removal was regarded as practically prohibitive. The conclusion of the matter was that the convention continued to occupy the Supreme Court room in the old Capitol building (the northeast room on the first floor) [1] until January 26, when on the adjournment of the legislature it was given accommodations in the Senate Chamber, situated in the north end of the building on the second floor, which for some years has been devoted to the use of the Law School of the State University for a library room.

There was the usual difficulty as to providing for the publication of the proceedings of the convention, with the result that a large, though undoubtedly very proper expenditure was incurred for printing and distribution of the proceedings from day to day, and their final publication in two volumes, aggregating over one thousand

[1] See Acts of 1855, Fifth General Assembly, Ch. 15, preserving to the United States Courts the use of the same room when they should be in session. This room had previously been the one granted for the use of the United States Courts. — Acts of 1848, Second General Assembly, Ch. 2.

pages of double column, small type, in which is found a stenographic report of the entire debates on every subject coming before the convention.[1] We have thus preserved to us not only the ultimate results of the convention's deliberations, but the expressions of views of individual members, which give valuable sidelights on the issues, political and economic, with which the convention was called upon to deal. The final action with reference to the publication of the Constitution as adopted for distribution to the voters before the election at which ratification or rejection of the proposed Constitution was to be voted on, indicates the presence in the State of considerable numbers of people from Germany and Holland, unable as yet to read the English language; but the membership of the convention did not include a single person of foreign birth, nor do the names suggest the foreign nationality of any of them. The convention itself was made up of men of American stock.

The convention also took steps to provide its members with the reports of the Supreme Court, so far as they had been issued, and the same privilege of using the State Library was conferred

[1] There was the usual controversy as to whether this extraordinary job of printing should go to the Public Printer or be let out to private parties. The State Printer got the job. But he was dilatory in finishing the sheets of the proceedings from day to day.

as was enjoyed by the members of the General Assembly, although this privilege seems to have been thought not very valuable, as one of the members declared that a great portion of the contents of the library "is composed of theological works, such as Clark's *Commentaries* and Scott's *Commentaries,* etc., works which I think would hardly be of so much service to the members of the convention" as the reports of the Supreme Court. It might not be improper to suggest in this connection that the old witticism to the effect that the decisions of the Supreme Court furnish a commentary on the "conflict of laws" had already at this time been perpetrated.

It will be impossible to notice in order the various discussions, some of them pursued at great length, with reference to different questions discussed before the convention. Many of these discussions led to nothing, for the general opinion of the members seemed to be that the Constitution of 1846 was in its main features sufficient, and that they were not sent here to make a new Constitution but to remedy a few objectionable features in the old one. Nevertheless some significant action was taken with reference to each article; and it will best serve present purposes to indicate consecutively the most important changes and the views expressed with reference thereto.

No changes were proposed in the preamble, the significant part of which is the designation of the boundaries of the State. The question of boundary had been a vital question in connection with the first proposed Constitution (of 1844) and the first adopted Constitution (of 1846). The former had been rejected because in accordance with the first enabling act the western boundary of the State had been fixed at about two-thirds of the distance from the Mississippi to the Missouri, leaving the "Missouri Slope" out of the State. But even with the proposition to include the entire territory from the Mississippi to the Missouri, that Constitution was again rejected by popular vote. By the time the Constitution of 1846 was framed, Congress had acceded to the wishes of the people and authorized the present boundaries, which were incorporated into the preamble to that Constitution. At the time of the formation of the Constitution of 1857 there was no question as to boundaries, save a proposition submitted to Congress by the legislature that the northern line of the State be run west to its intersection with the Missouri River, so as to include the peninsula, now a part of South Dakota, lying between the Big Sioux and the Missouri rivers. As this territory was not then included within any existing State, it was thought that Congress might be willing to annex

it to Iowa, and thus give to Iowa that extensive area which now constitutes a large portion of the territory of South Dakota. But it was not thought necessary for the constitutional convention to take any action with reference to the matter.

Several changes of theoretical interest were made in Article I, the Bill of Rights, the first being the addition to § 4 of a provision as to competency of witnesses, so as to prevent disqualification on account of interest. On the face of it this change involved a liberalizing of the rules of evidence which under the Common Law excluded the testimony of the parties to, or those interested in, the result of a judicial proceeding. But the discussion hinged largely on the effect of the amendment as preventing the exclusion of the testimony of Negroes. The first section of the chapter relating to evidence in the Code of 1851 (§ 2388), provided that no Indian, Negro, Mulatto, or Black person should be allowed to give testimony in any case wherein a White person was a party, and the Supreme Court had held (Motts v. Usher, 2 Iowa, 82) that the disqualification was such that it could not be waived in a proceeding against a White person by a Negro. But this provision had been repealed by the legislature, which was still in session when the constitutional convention met, and it was for the

purpose of preventing the re-enactment of any similar discriminating provisions that the change in the section of the Bill of Rights was insisted upon. During this discussion, the whole question of the status of the Negro was gone into, with the general concurrence of opinion that although slavery in the State could not be tolerated, the presence of the Negro was not desired, and while his right to testify as a witness and to enjoy personal liberty and property should be respected, his political status must be left to future settlement. The convention was willing to concede that he was a human being, but was unwilling to agree that he should enjoy any privileges as a member of the body politic. There was a general disclaimer of any inclination to induce the accession of Negroes to the population of the State.

A change was made in § 9 by inserting the provision for trial by a less number of jurors than twelve, in inferior courts; and the well known provision, which for some unexplained reason had been omitted from the Constitution of 1846, that "no person shall be deprived of life, liberty or property without due process of law," was added. The first of these changes was of great practical importance in facilitating the trial of petty cases before justices of the peace, and the second was of great theoretical, but not very much practical, significance for the reason

that the whole distribution of power to the department of the State government was such that no one of them could be found authorized to do the thing prohibited.

The next proposed change in the Bill of Rights which occasioned extended discussion was the insertion in § 10 of the clause guaranteeing the right to a speedy and public trial by an impartial jury "in cases involving the life or liberty of an individual." In opposition to the insertion of this clause in the section which previously guaranteed in general jury trial in criminal prosecutions, it was urged that the effect would be to prevent the surrender of a fugitive from justice demanded for trial in another State under the provisions of the Federal Constitution, and that there was a further hidden purpose of nullifying the Fugitive Slave Law by giving to the person whose return was demanded from another State the right of jury trial for determining whether he was in fact free. Opposition to the enforcement of the Fugitive Slave Law was clearly disclosed in the debate, and those who favored the insertion of the proposed amendment, while disclaiming that it would prevent the surrender of fugitives from justice without a trial, took no pains to conceal the fact that they should be entirely satisfied if it prevented the surrender of fugitive slaves. It will be remem-

bered that in Wisconsin, and perhaps in other States, the direct nullification by State action of the enforcement of the Fugitive Slave Law was attempted, and that the power of the Federal courts to enforce the law in any State regardless of the action of the legislatures and courts of such States was not finally established until some years later. It will not be important to pursue the question further in this connection, as no difficulty ever arose in this State out of the insertion of the amendment as proposed.

Section 11 of the same Article was changed so as to authorize summary trial before justices of the peace for offenses less than felony in which the punishment does not exceed a fine of $100 or imprisonment for thirty days, no indictment being required in such cases, the right of appeal to the District Court being preserved. The wisdom and validity of this provision for treating petty offenses without the complicated machinery of indictment and trial in a court of record have been sustained, and by subsequent amendment the section has been further modified so as to allow indictment by a grand jury of less than twelve members.

The section guaranteeing the right to a writ of habeas corpus was amplified so as to prohibit the refusal of the writ when application shall be

properly made; but as to this there was no extended discussion.

Section 18, prohibiting the taking of private property for public use without just compensation, was amended so as to prohibit the taking into account of any benefit to result to the owner of the property on account of the improvement for which it is taken, and the protection of private property rights as against condemnation was thus still further extended. Similar provisions are found in the Constitutions of other States, with the result that now as a general proposition the man whose property is taken for public improvement is put on the same footing as an adjoining property owner, no portion of whose land is taken, each being allowed to enjoy the benefits.

Section 24 of the same Article was inserted without prolonged debate, prohibiting leases or grants of agricultural lands reserving rent for a longer period than twenty years. This section seems to have been borrowed from New York, where the determination of the rights of tenants under long leases had become a subject of controversy; but there has never been any system of land tenure in this State to which the provision has been found applicable.

Article II, with reference to the Right of Suffrage, was the subject of protracted discus-

sion in connection with the proposition to strike out the word "white." But as already indicated, there was no indication of a concerted movement to secure the elective franchise to the Negro; and eventually the Constitution was adopted without change in this respect, with a provision for submitting to the people, at the same election at which the Constitution should be voted upon, the question of striking out the word "white" in this article. The result was that the word "white" was not stricken out, the majority against the proposition being overwhelming, and with reference to the political rights of the Negro the Constitution remained unchanged until after the conclusion of the War of Secession when in 1868 the term "white" was stricken out as a qualification for the elective franchise. As a qualification of membership in the General Assembly, it was only eliminated by amendment in 1880.

The term of residence in the county required of voters was extended from twenty to sixty days. The requirement that the voter be a citizen of the United States had been placed in the first Constitution, although not found in all the State Constitutions of that period.

Few changes of significance were made in the Article relating to the Legislative Department. For practical convenience it was provided that

the General Assembly should convene on the second Monday of January, instead of on the first Monday of December, ensuing the election of its members; and the date of election was changed from the first Monday in August to the second Tuesday in October, save on the years of the Presidential election, when it was made to correspond to the date fixed by the Federal statute for the Presidential election. It was not until 1884 that by amendment to the Constitution the general election for all State officers was fixed to correspond with the date of the Federal election in November. Two important provisions were inserted in this article as Sections 29 and 30, the first requiring that each act shall embrace but one subject, which shall be expressed in the title, the other that the General Assembly shall not pass local or special laws in a variety of cases enumerated where a general law can be made applicable. The first of these is a provision common in State Constitutions, intended to prevent the insertion in bills relating to essential matters, such as appropriations, of sections not germane to the subject, embodying legislation for which approval could not be secured in any other manner. The practices sought to be prohibited involving log-rolling and the attachment of riders to the appropriation bills had been found highly objectionable, and it is to be

regretted that some similar provision had not been inserted in the Constitution of the United States with reference to legislation by Congress. The second section has avoided the necessity or avoided the opportunity, as the case may be, of special legislation on a great variety of matters which are still the subjects in some States of extended, complicated, and conflicting legislation, tending to undue enlargement of the successive volumes of the session laws, and inextricable confusion, especially with reference to the charter powers of cities. The reduction of the necessary volume of legislation resulting from the adoption of this section is illustrated by the fact that the Acts of the Sixth General Assembly, which concluded its session while the constitutional convention was still sitting, covered nearly five hundred pages, while none of the volumes of session laws of recent years extend beyond two hundred pages. The Acts of the Sixth General Assembly are full of statutes with reference to the changes of roads, the incorporation of cities and towns, the changing of names of persons, the amendment of charters of railroads, and like matters, which it is found can be satisfactorily disposed of in methods provided by general law, without special legislative action. The prohibition of special acts for the incorporation of cities was of especial import-

ance. Until the adoption of this provision, cities had been incorporated with special charters differing from each other in many details, and even in very important particulars, so that the legislature could not pass laws relating to city government without taking into account many different special charter provisions. Under the Constitution of 1857 it was possible to enact a general code relating to the government of cities. While many of the cities incorporated prior to 1857 have surrendered their special charters and accepted the general laws in their stead, a few, still known as special charter cities, retain their charters; and the confusion resulting from the necessity of special legislation with reference to them continues. The legislature might abolish these special charters and put the cities retaining them on the same basis as other cities of the same class, but it has thus far failed to do so.

By another new section of the Article as to the Legislative Department, the number of Senators was limited to fifty, and the number of Representatives to one hundred, and this limitation on the membership of the legislative bodies continued in force until in 1904, when an amendment was adopted allowing the membership of the House to be enlarged to a number not exceeding one hundred and eight.

An effort was made even at this early date to incorporate the principle of the referendum, so that laws might be submitted to a vote of the people to decide whether they shall go into effect; but there was no discussion on the subject, and the proposition was defeated by a majority of one.

In Article IV, relating to the Executive Department, the only significant changes were the reduction of the official term of the Governor from four to two years, and the creating of the office of Lieutenant Governor.

Article V, relating to the Judicial Department, was almost entirely re-written, and to understand the views of the convention in making the changes in that article it is important to have in mind the history of the Judicial Department of the State up to that time. When the Territory was organized, the judicial system consisted of district courts held by a judge in each of the districts into which the counties of the State were divided, and a Supreme Court entertaining jurisdiction of appeals from the district courts. The Supreme Court held its terms only at the capital of the State. The first session of the Supreme Court of the Territory was held at Burlington (then the capital), November, 1838. In the Constitution of 1846, the same general system was retained, the

Supreme Court consisting of a Chief Justice and two associates, elected by joint vote of both branches of the General Assembly, and the district court of one judge, elected by the qualified voters of the district. It was further provided in that Constitution that the State should be divided into four districts, which number might be increased as the exigencies might require. At the extra session of the first State legislature (1848) procedure in the Supreme Court was substantially codified, and it was provided that terms thereof should be holden in each judicial district. In 1853 the plan in this respect was completely changed, and it was provided that the terms of the Supreme Court should be held at the capital of the State, and at no other place; and this was the condition of affairs so far as the Supreme Court was concerned when the constitutional convention met. In the meantime, however, the legislature had increased the number of districts with great rapidity, so that there were fourteen and, as already indicated, a district judge for each. The discussions in the convention would indicate that there was a popular demand for the election of the Supreme Court judges by the people instead of by the General Assembly, and for some arrangement by which appeals of lesser importance might be determined without presenting them

at the capital of the State. The election of the Supreme Court judges by the people was easily agreed to; but on the other question there was great difference of opinion. The New York system, involving general terms to be held by the trial judges of three districts combined to hear appeals was strongly urged; but ultimately that plan failed to receive the approval of the convention, and the district court system with only one method of appeal was retained. And it was provided that the State should be divided into eleven judicial districts, which might be reorganized after the year 1860 and increased or diminished by not more than one district at any one session of the General Assembly, and that no reorganization of districts, or change of boundaries, or increase or diminution of the number of judges, should take place oftener than every four years thereafter. The evident purpose was not only to lessen the number of districts existing, but to prevent unnecessary subsequent increase thereof. The judicial business of the State must have increased more rapidly than was anticipated, or perhaps there was an undue pressure for judicial positions to be filled; for in 1868 a circuit court was created, each judicial district being divided into two circuits, for each of which a circuit judge was to be elected, and on this circuit court was con-

ferred the judicial business previously entrusted to the county court held by a county judge, whose administrative functions had already been taken away when the Board of Supervisors system was inaugurated in 1860. The circuit court was also given concurrent jurisdiction with the district court in civil actions at law, and the district court was therefore left with this concurrent jurisdiction in law cases, on the civil side of the calendar, and exclusive jurisdiction in equity and in criminal cases. In connection with this inauguration of the circuit court system, a provision was made for general terms to be held in each district by the district judge and the two circuit judges, at which general terms appeals from judgments of the district court or circuit courts in the district should be heard. But a further appeal from the general term to the Supreme Court in all cases was provided for, with the practical result that in many cases there were two appeals instead of one, thus delaying the final disposition of causes. This system of general terms was no doubt an attempt to carry out the plan discussed in the constitutional convention and advocated on the ground that there should be an opportunity for the disposition of appeals without resorting to the Supreme Court at the capital; but the plan evidently was unsatisfactory, for at the next General Assembly,

the general term was abolished and appeals from both circuit and district courts were allowed directly to the Supreme Court. Another judge of the latter court had already been provided for in 1864, at the same session of the legislature at which circuit courts and general terms were created; and the Supreme Court was again put on wheels and required to hold argument terms at Davenport and Dubuque and later at Council Bluffs. After the abolition of the general term in 1870, the judicial system of the State consisted, therefore, of circuit courts and district courts, with largely co-ordinate jurisdiction, and a Supreme Court, consisting of four judges, held at the capital, and at three other places in the State to which appeals were taken from both district and circuit courts. In 1884 an amendment of the Constitution was adopted authorizing the legislature to reorganize the judicial districts without the limitations found in the original judiciary Article; and in 1886 the number was increased to eighteen, with one, two, or three district judges in each as the amount of business in each district seemed to require, and the circuit court was abolished. Since that time we have had in the State the original system of district courts, and one Supreme Court (with an increased number of judges), with a simple system of appeals to the latter court. The same

legislature which reorganized the judicial districts also provided for the holding of all the terms of the Supreme Court at the State capital. Efforts have been made at two or three sessions of the General Assembly to provide some intermediate court of appeals, which should have practically exclusive jurisdiction of appeals in certain classes of cases, so as to relieve the Supreme Court from the burden of a portion of its business. It has been conceded that an intermediate court would be of little advantage unless its determination of the cases considered by it should be final, for the experience with the general term had demonstrated the inexpediency of any scheme involving successive appeals in the same case. But the insurmountable obstacle seems to be that the Constitution gives final appellate jurisdiction to the Supreme Court, and without an amendment of the Constitution in this respect it is doubtful whether a practical system of appeals to an intermediate court can be arranged so as to afford any substantial relief.

A further provision of the judiciary Article was for the substitution of district attorneys for county attorneys, to prosecute criminal and other cases in the name of the State. This system was however abandoned in 1884, when the county attorney system was substituted by an amendment of the Constitution. At the same time the

judiciary Article was further amended so as to authorize the reduction by the legislature of the number of grand jurors.

Article VI, relating to the Militia, was not changed.

Article VII, relating to State Debts, was entirely overhauled. By the Constitution of 1846, the indebtedness of the State was limited to $100,000, but in the new Constitution the State is expressly prohibited from loaning its credit in aid of any corporation or individual, and the limit of the indebtedness which it may contract for any proper purpose is fixed at $250,000. The significance of these changes is to be found in assertions made in the constitutional convention that under a strained construction of the previous Constitution, the indebtedness of the State had been extended far beyond the limit of $100,000, and the purpose evidently was to give a more liberal limit and make it impossible that such limit should be exceeded. To the credit of the State it is to be said that there has been no occasion to apply the limitation, and for many years there has been practically no State debt in Iowa.

Article VIII, relating to Corporations, furnished the immediate occasion for a constitutional convention, and it will be necessary to notice briefly the conditions which made a change

in the Constitution of 1846 imperative in the minds of many of the people of the State. The subject of banking had largely engrossed the attention of the convention which framed the proposed Constitution of 1844. The State was suffering from a depreciated paper currency, issued by banks in various States, many of which had proven to be irresponsible. But it was thought sufficient at that time to prohibit the incorporation of any bank or banking institution unless the charter thereof, with all its provisions, should be submitted to a vote of the people at a general election. The convention which framed the Constitution of 1846, took more radical measures as against the supposed evils of banking, and entirely prohibited the creation of any corporation or the extension of the charter of any existing corporation having the privilege of making, issuing, or putting in circulation any kind of paper to circulate as money. The prohibition extended further to the creation of any corporations with banking privileges. In that convention there had been strong opposition to this method of regulation by extermination, and an agitation had almost at once been started toward a change by which there might be banks in the State subject to legitimate regulation, for it was pointed out that with the inability of the legislature to provide for a

safe currency, the people were helpless as against the flood of depreciated or unsafe currency brought in from other States.

As already indicated, this agitation, growing in strength from year to year, was the practical occasion for the calling of the convention of 1857. In that convention the whole subject was threshed over, the antagonism to banks, whether of issue or of deposit, was fully aired, and the necessity of some form of banking for communities rapidly developing in population and wealth was on the other hand strongly insisted upon. Without going into the merits of the debate pro and con, the ultimate result was the provision in Article VIII for the creation of corporations or associations with banking powers on submission of the question to popular vote, and the approval thereof by a majority of the electors voting for and against the proposition. There are also stringent provisions for the security of the circulation, and the depositors in the banks which should thus be created. Under the authority thus given, the legislature at its next session provided for the incorporation of a State Bank with branches, and this legislation was approved by the voters at the next election. At the same time general banking was authorized. A justification of these more liberal provisions for the banking business is to be found

in the institutions thus authorized. The State Bank continued solvent and its notes redeemable until it was forced out of business by the enactment of the national banking law; and the incorporated banks authorized by State law have been subjected to such rigid regulation and supervision that they have, with rare exceptions, conducted their business with entire safety to their depositors.

Much was said in the debates with reference to corporations in general; but as a matter of fact little change was made as to their status. There was a wise provision in the first Constitution that corporations should be created only in accordance with general law, and the corruption of legislative bodies in the interest of securing special charters was made impossible in Iowa. One important provision was inserted as § 12, reserving to the General Assembly the power to amend or repeal all laws for the organization or creation of corporations, or the granting of special or exclusive privileges or immunities, and it was around this provision that the debates relating to corporations other than banks were waged. But as a matter of fact there was no serious objection to the adoption of some provision to limit the contractual nature of corporate charters, as established in the Dartmouth College case, and this State by the adoption of

this clause in the Constitution is ranged with many if not practically all the other States of the Union in support of the proposition that no corporation can acquire a charter right which the legislature cannot annul.

The educational system of the State briefly provided for in Article IX of the first Constitution was entirely changed. The office of Superintendent of Public Instruction which had become odious on account of misconduct and perversion of funds on the part of the incumbent, was abolished, and an anomalous scheme was adopted, creating a legislative body called the Board of Education, having authority under the general supervision of the legislature to pass laws for the management of the State's educational interests. It is enough to say that while the scheme had for its legitimate object the removal of the educational interests from political control it proved unsatisfactory, and in accordance with a provision found in the Article itself was abolished by the legislature in 1864, when the office of State Superintendent of Public Instruction was revived.

Article X, relating to Amendments to the Constitution, was made specific as to the method of submitting and voting upon propositions for amendment.

In Article XI, containing miscellaneous provisions, there were many changes but none occasioning general discussion save that which permanently located the seat of government at Des Moines, and the State University at Iowa City. It is interesting to notice that as an original proposition, the establishment of the State University at Iowa City was defeated, although the removal of the capital to Des Moines had already been determined upon by the legislature in 1855. It was thought that as the policy of scattering the charitable and educational institutions through the State had been agreed upon, it was showing undue partiality to Iowa City to exempt it from the general scramble then going on for location of State institutions. But when it was reflected that the location of the capital at Des Moines was only secured by an act which was still subject to repeal, a new light dawned on some of the members and they were willing to stand for the constitutional provision fixing the location both of the capital and of the State University.

One new provision found in Article XI deserves notice on account of its importance, although it was not the subject of any extensive difference of opinion. This is § 3 which prohibits counties or other political or municipal corporations from becoming indebted to an

amount in the aggregate exceeding five per cent on the valuation of the taxable property. Some of the counties of the State had already incurred large indebtedness in subscriptions to stock or bonds of projected railroads, and there was a universal desire that railroads be encouraged to extend their lines through unoccupied territory. It was contemplated that such aid might in some form be given but it was realized that there should be some limit, and this limit was thus wisely fixed. Perhaps no provision of the Constitution has more frequently been invoked, nor, on the whole, has any provision been of more substantial or permanent benefit. The tendency to discount the future so prevalent in new communities was thus restrained within reasonable limits.

The last, and perhaps the most acrimonious, debate in the convention was on the adoption of the Schedule (Article XII) providing for the election of officers under the new Constitution. The provision as reported by the committee and as finally adopted was that at the next two succeeding elections the State officers divided into two groups should be chosen and that at the first of these two elections, the members of the House of Representatives and the Senators whose terms should then have expired, should be elected in accordance with the act of apportionment of the

General Assembly, then just adjourned. This General Assembly was the first one in which the Democrats had not had a majority, and it was charged that the Republicans had so redistricted the State that an assembly chosen under that apportionment would not represent a majority of the voters. Of course the alternative was to provide for a new apportionment in the Constitution itself in accordance with which the members of the next General Assembly should be chosen; but as the Republicans had a majority also in the convention, it was evident that there could be no political advantage to the Democrats in any attempted new apportionment, and so they limited themselves to a violent protest against the injustice of perpetuating the apportionment of the last legislature.

It may justly be said however, with regard to partisanship, that while it was violently manifested in the debate as to apportionment, and also in the various debates as to the political rights of the Negro, it was a partisanship of individual opinion and party predilection rather than a partisanship of bossism or arbitrary party rule. Nothing is more significant than the freedom from mere party dictation. There was no party caucusing, and on but few propositions, and those in the main theoretical rather than practical, was the determination made to depend

upon a strict party vote. These men were partisans, but they recognized the responsibilty of making a Constitution which should receive the popular approval, and it was evident that such approval would depend more largely upon the judgment of the voters as to whether the Constitution was a satisfactory instrument of government with reference to the management of the affairs of the State than upon whether it reflected the doctrines of one or the other of the existing political parties. That the judgment of the voters in their final action on the adoption of the proposed Constitution was not dictated wholly by partisan considerations, is evident from the size of the majority in its favor. A few of the members who had signed the proposed Constitution worked before the people for its rejection, but the result was a majority of nearly two thousand out of a total vote of about eighty thousand. The Constitution of 1846 had been ratified by a majority of less than four hundred.

The labors of the convention of 1857 were thus crowned by the adoption of the Constitution which it had prepared, and which has remained for half a century, with but insignificant changes, the fundamental law of the State. While the immediate object had been to amend the existing Constitution in only a few respects,

the responsibility for perfecting a permanent instrument rested upon the members of the convention, and that they felt the weight of this responsibility is evident from the fact that while at the beginning of their session it was thought two or three weeks would afford ample time to mature the changes which were necessary, they actually remained in continuous and laborious session for thirty-nine days; on many of these days meeting in the evening as well as in the forenoon and afternoon. In comparison with the conventions which prepared the proposed Constitution of 1844, and the adopted Constitution of 1846, the labors of the convention of 1857 were protracted, for in 1844 twenty-six days sufficed to complete the original draft of a Constitution, and in 1846 it required only fifteen days to prepare the Constitution which was adopted.

A written Constitution is not, as often popularly assumed, composed of mere technical restrictions on the legislative power, serving as accidental obstructions to the attainment by the representatives of the people of that which is desired, mere hurdles to be vaulted by the successful runner and tripping only the less skilful. It is a concrete statement of the historical principles which lie at the foundation of our conceptions of government. These conceptions

have been evolved in the experience of English speaking people, from the time government was first instituted among the Anglo-Saxon tribes in the northwest of Europe, before they were first brought in contact with the power of Rome. In unbroken continuity these institutions have been perfected as the Anglo-Saxon peoples have developed from a state of barbarism to a state of the highest civilization. He would be a presumptuous man who should assume to set up his own individual judgment as against this accumulated wisdom and experience of ages, and no supposed emergency of a temporary character ought to have much weight as an argument for a change in these fundamental principles. It may be true that the conceptions of freedom and independence entertained by the framers of our constitutional system have been too individualistic, and that they are in some ways inapplicable to the state of society necessarily existing in a country of comparatively dense population, but the burden is on those who insist upon a change in these fundamental conceptions to demonstrate that any reasonable prospect of improvement is not offset by the possible loss of those things which we most highly value, and without which we would be dissatisfied and unhappy. This Constitution of ours, the concrete result of development through the centuries, ought not to be

set aside in any of its substantial features without a serious consideration of the possible result of any change as affecting the enlightenment and prosperity of the people for whom it serves as a charter of government.

PRESENTATION OF THE SURVIVORS OF THE CONSTITUTIONAL CONVENTIONS

Governor ALBERT B. CUMMINS: — We will hold but a few moments longer. President MacLean wishes to make an announcement. He will also present to the audience the survivors of the Constitutional Conventions.

President GEORGE E. MACLEAN: — I wish to announce that the luncheon at the Burkley Imperial will be served at one o'clock.

It is my high privilege, given me by the officers of The State Historical Society, to pay tribute of veneration to these three representatives of the three Constitutional Conventions of Iowa. It will be your pleasure to identify and greet these venerable gentlemen as I read their names. When they have risen in response to their names, the audience will rise to express the feelings that are in our hearts. I have the honor to present: —

Hon. John H. Peters, of Manchester, who

came to Iowa in 1853 and was a member of the Constitutional Convention of 1857. [1]

Hon. J. Scott Richman, of Muscatine, who came to Iowa in 1839 and was a member of the Constitutional Convention of 1846. [2]

Hon. Samuel W. Durham who came to Iowa in 1840 and was a member of the Constitutional Convention of 1844. [3]

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[1] John Henry Peters was born in the town of Kent, Lichfield County, Connecticut, on February 2, 1829. He came to Iowa in February, 1853, and settled in Delhi, Delaware County. In 1880 when the county seat was changed from Delhi to Manchester, Mr. Peters removed to Manchester where he now resides. His occupation has been that of an attorney at law. In August, 1861, he entered the military service of the United States as Captain of Company B 4th Regiment of Iowa Cavalry Volunteers. In August, 1865, Mr. Peters was mustered out of service with the rank of Lieutenant Colonel. In politics he has always been a Democrat. He was a delegate to the Constitutional Convention of 1857, and, so far as known, is now its sole surviving member.

[2] J. Scott Richman was born at Somerset, Ohio, on March 11, 1820. He removed to Muscatine, Iowa, in March, 1839. Save for eight years spent in Davenport, his home has been in Muscatine. His occupation has been that of a lawyer. He was a member of the House of Representatives of the General Assembly for the extra session in 1856; and at the extra session of the First General Assembly in 1848 he served as Chief Clerk of the House. In the early days Mr. Richman was a Whig; later he became a Republican in politics. He was a delegate to the Constitutional Convention of 1846 and is now its sole surviving member.

[3] Samuel Wallace Durham was born on March 7, 1817, at Vallonia, Jackson County, Indiana. His parents were from Kentucky. Mr. Durham removed to Iowa in 1840; and, with the exception of three years spent on a farm, Marion, in Linn County, has been his home ever since his arrival. From 1843 to 1855 he occupied the

Napoleon, in the shadow of the pyramids, encouraged his legions by saying that forty centuries looked down upon them. After the address of this morning we may say that forty centuries of Anglo-Saxon civilization are looking down upon us. Sole survivors of the Constitutional Conventions of Iowa, you honor us with your presence. And to-day the State University and The State Historical Society pledge that these your fellow-citizens and their successors shall preserve the principles of Anglo-Saxon civilization and of Constitutional Law that you have handed down to us.

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office of United States Deputy Surveyor; in 1846-1847 he held the office of Sheriff; and at intervals from 1841 to 1895 he filled the office of County Surveyor. Mr. Durham has been a Democrat in politics, and from 1841 to 1855 took an active part in political campaigns. He was a delegate to the Constitutional Convention of 1844 and to-day is its sole surviving member.

PART III

THE CONFERENCES

PROCEEDINGS OF THE CONFERENCE ON THE TEACHING OF HISTORY

Isaac A. Loos, Presiding

THE CONFERENCE ON THE TEACHING OF HISTORY

[In the Hall of Liberal Arts Room 203]

Professor Isaac A. Loos: — The program of the Conference this morning is not printed. It is proposed, however, to call on a few men who have been invited to speak. After these persons have spoken the subject will be thrown open for general discussion. The first number on the program as arranged was to have been given by Professor Macy; but his paper will have to be deferred for the present. The second number, on *The Relation of History to Economics,* by Professor Parish, the third, on *The Place of History in Technical Schools,* by Professor Cessna, and the fourth, on *The Best Methods of Teaching History,* by Professor Wilcox, will be given in their order.

Those who heard the lecture last evening may call to mind, as a preparation for this morning's discussion, a number of the things said and suggested by Professor Wambaugh.[1] His subject was *The Relation Between General History and the History of Law.* What seemed to me the

[1] Professor Wambaugh's address on *The Relation between General History and the History of Law* is given above, p. 85.

keynote (and the discussion of the history of two thousand years suggests various keynotes) was that local institutions are law, and law represents in its initial stages a local constitution of the people. When we gather the fruit of what was done we must go back to the people and the institutions themselves. The history of the social sciences in recent decades has been greatly influenced by this general thought, having reckoned with facts now fully recognized in political economy. The program will begin with a paper on *The Relation of History to Economics* by Professor Parish, of the Iowa State Normal School.

Professor L. W. PARISH: — *Ladies and Gentlemen*: Although a teacher of political economy rather than of history, it is nevertheless a great pleasure to meet with teachers of history and to try to show the relation between the teaching of history and political economy.

When we call to mind the enthusiastic reception given to Adam Smith's *Wealth of Nations* and note its prompt and marked influence on public opinion and even on legislation; when we remember the brilliant group of scholars who were his disciples and who helped to establish for nearly a century, and almost without successful dispute, a great school of political economy; when we read, more than a century later,

the words of one of our keenest American thinkers, declaring that he is a Ricardian of Ricardians, we may safely concede that theoretical economics secured abundant recognition among the best thinkers of the day and may claim for it a worthy place among the factors looking to the solution of great industrial problems.

The most plausible objection to the theory of economics was that it carried too much of the dust of the study. It was too theoretical; and, being based on the impossible condition of perfect competition, the theory seemed often to be flatly contradicted by the facts of every-day life. Arnold Toynbee said of Ricardo's great work: "Grant his premises and you must grant all." This was a noble tribute to the logical power and unity of the classical economics; but Toynbee also said: "The political economy of Ricardo is *at last* rejected as an intellectual imposture."

It was, then, the lack of consistency with experience that vitiated the instructions of economics, and only through the reconciliation of the two can economics come into its own.

History is experience writ large and wide and long — as large as humanity, as wide as the continents, as long as time. There is scarcely an error of theory or practice upon which some phase of history will not throw light and prevent mortifying and perhaps disastrous results. The

periodic reappearance of old schemes with new faces only proves how much we need to study the past if we would live wisely in the present. History appeals, more directly than almost any other study, to every age and condition of man — to the child in the nursery and to the youth in school, as well as to the mature scholar and the statesman. It requires no special bias, no complex apparatus, and no extensive supervision outside of the schoolroom. Moreover, the habit of historical study, once properly established, is easily and naturally continued in the busy life beyond the school.

It was just here then that history, remote and current, narrative and statistical, came to the aid of economics, placing the real by the side of the ideal, and requiring a comparison of fact and theory which if favorable to the latter commended it to public confidence, but if unfavorable, forced a reconsideration and a modification, which brought economic theory nearer the truth, making it more reliable and therefore more helpful.

Some of the grandest theories of economic science have been abundantly confirmed by the study of history; others have been wisely modified; and some have been practically discarded. The Physiocrats have found that agriculture is not the only productive occupation, but that com-

merce and manufactures are of inestimable value in the development of any country. The Mercantilists have learned, through the facts of international commerce, that "the favorable balance of trade" is more useful as a political club than as a safe guide in the policies of nations.

The theory of supply and demand was clearly endorsed by history in the time of the Black Death, for the slack supply of labor after that devastating scourge caused a marked increase in wages in spite of the repeated enactment of laws forbidding any change in the customary wage. The same principle was again verified when Henry VIII confiscated the monasteries, distributing their estates among his courtiers who sold the stock and offered the bare land for rent, thus destroying the class of small farmers and forcing them into the already overcrowded class of wage-earners, and still further depressing wages although general prices were at the time inflated by the repeated debasement and consequent inflation of the coinage. But if the principle of supply and demand has been confirmed, the wage fund theory, which for over a century was prominent in classical economics, has practically lost all recognition among the theories of wages.

Before the time of Adam Smith government interference, in various forms, had been the accepted rule through all the history of the manor, the gild, the merchant adventurers, and the monopolies of Elizabeth and the Stuarts. To be sure, even in those days, experience was modifying public opinion and public policy in the direction of individual rights and the public good. But it required the clear reasoning and cogent illustrations of *The Wealth of Nations* to establish the *Laissez Faire* doctrine as the recognized policy in English legislation. And right here is an example of the great modification of an economic principle through the influence of current history, for the theory of non-interference was hardly a quarter of a century old before the cruel prosecution of women and children in the mines and cotton mills brought about a reaction, leaving its mark in the long list of factory acts and, later, of sumptuary laws of all sorts, increasing in stringency and scope until in our own country the inspection laws, prohibitory amendments, pure-food and anti-trust laws, and the recent two-cent rail-road fare would seem to indicate that the *Laissez Faire* doctrine lives only to be applied where, for some reason, we wish to be "let alone."

As to European history, we might recall Spain's sharp lesson in free trade when, under

the joint government with Portugal, she punished little Holland by forbidding her merchants to enter the harbor of Lisbon to secure the products brought from India by the Portuguese, and waked up later to realize that she had simply precipitated the establishment of the Great Dutch East India Company.

England learned some excellent lessons in politico-economics by the loss of her most valuable possessions in America, and made changes in her colonial policy which have been a blessing to herself and to all her dependencies. The political economy of Adam Smith and Ricardo called for international free trade, but the experiences in commerce during the Napoleonic wars and the War of 1812 almost forced Americans into a protective policy as the only means of saving their infant industries. Since then nearly a century of history has passed before us, and today no argument in favor of revision of the tariff is stronger than a careful review of the tariff history and the origin of certain favored industries which have grown to gigantic power and unbearable insolence under the fostering care of unlimited protection.

The early settlers of Iowa, with half-developed economic theories and influenced by the unfortunate banking history of the previous thirty years, introduced into their first State

Constitution heavy restrictions on corporations and absolute prohibition of banks. Eleven years of retarded development, due to a lack of rail-roads and a surplus of the wildcat currency of other States, was scarcely sufficient to convince them of their error and bring about the revision of policy which marks the new Constitution whose Fiftieth Anniversary we celebrate today.

The great economic problems of today — municipal ownership, control of the trusts, tariff, patents, and taxation — are being settled as much by the study of current history as in any other way; and they will be more safely settled in this manner than by any pure "a priori" method. The socio-economic questions of our slum districts are being most successfully studied by our college settlements, and this is only a very practical application of current history to economics.

The danger of wrong conclusions drawn from the comparative study of such questions as municipal ownership and government ownership of rail-roads is evident enough; but forewarned is forearmed. Moreover, every year we are getting better and more reliable statistics; more skilled, unbiased and fearless talent is being given to the work; and the prospect is reasonably bright that the American people, working with the student of history past and present, will gradually secure for themselves a

purer political life, a larger industrial liberty, and a far nobler manhood and womanhood than seems to be indicated by the actual conditions of society today.

Professor Isaac A. Loos: — The second paper on the program will be read by Professor Cessna, of the Iowa State College of Agriculture and Mechanic Arts. His subject is *The Place of History in the Technical School.*

Professor O. H. Cessna: — *Ladies and Gentlemen*: When Professor Loos visited our College last Sunday, I remarked, in talking with him concerning the program of this Conference, that it was not possible to settle even one of these questions in ten minutes. He said that it was not intended, perhaps, to *settle* any of these questions, but rather to have a fellowship meeting, that the Conference was called. We have a method at the State College by which when we exhibit stock we show their gait by trotting them up and down, while some one holds the whip. On this occasion I am to be trotted up and down to be exhibited, and Professor Loos holds the whip.

Formerly there were four great professions, the law, ministry, medicine, and teaching. But in more recent years the horizon has been greatly

widened and the circle extended until many more vocations are included in what may be properly called the professions; so I will not insist upon a too definite line being drawn between the technical and the professional.

As I understand the invitation of the program committee, I am to speak of the place of history in some such school as that with which I am connected and not simply in a manual training school. A profession may be best defined as an occupation that properly involves a liberal education, or its equivalent, and mental rather than manual labor, and hence is any calling involving special mental and other attainments or special discipline.

Technical may mean special or exclusively pertaining to some particular art, science, trade, or occupation where the work shall be manual rather than mental.

On the basis of these definitions the engineer, the agriculturist, the scientist, the government expert, or the teacher in the various lines of the new activities which are forcing themselves upon us will properly take his place beside the members of the other great professions of life. These occupations properly involve a liberal education, or its equivalent and mental rather than, or perhaps as well as, manual labor; so that the place of history in the schools training for these pro-

fessions will be the same as that in any other professional school. Especially will this be recognized as true when it is known that the demands of these great vocations are such as to make it necessary to provide full four year courses of instruction based upon an entrance requirement of graduation from a fully accredited high school or its equivalent. Thirteen out of the fourteen long courses given at the institution with which I am connected are such.

Now, in such a school history has a place — a vital place. And what I say of history may as properly be said of literature or of any of what may be called the great social studies of life. These leaders of thought in the great professions of life must be liberally educated if as a nation we are not to lower the standard of culture, or if we are to offset the tremendous trend toward the mere material gain which often sacrifices the man for the machine.

The place of history is a vital one because of the nature and influence of historical study and because of the nature of these schools and the place their graduates are expected to occupy in the social organism.

It seems scarcely necessary to recapitulate in this presence the arguments for the value of historical study in the scheme of general education. Suffice it to say that the past decade has

witnessed as great a change in the place and method of the study of history as in that of any other branch of learning in the school curriculum. The report of the Committee of Seven of the American Historical Association in 1896 has practically revolutionized the study of history in the schools.

The value of the natural sciences was emphasized as bringing a realization of the world about one, as giving a better knowledge of one's self, and also as quickening his powers of observation. It is being recognized that it is even more desirable that one should be led to see the steps in the development of the human race and should at least have some dim perception of his own place and of his country's place in the great movements of man.

We need in all our educational schemes to recognize, what has been emphasized by Professor Hanus, that there are several aims to be reached in our educational work, if it is to promote the interests of the highest manhood and citizenship. No one of these aims can be sacrificed without serious loss. A man must be educated vocationally, socially, and for his own personal higher interests as a man — vocational, social, cultural.

That scheme of education has failed which so puts the emphasis upon the vocational as

practically to exclude the other demands. It is one-sided and harmful. The student should receive direction and training in his special vocation and this should be thorough and complete to meet the demands of this day of specialization. But he is a social being — in society and a part of it — an important factor in a republic like our own, and should be trained in those specific duties which will promote the welfare of society. He is a man as well, and he owes it to himself to open as many interests as possible for his own life. President King in his *Rational Living* emphasizes the need of a wide range of interests. A man's life is measured by the interests to which he can respond. His growth also depends on the enlarging of this circle of interests. And one's possible influence over others depends in no small degree upon these same interests. It is scarcely possible to over-emphasize the importance of historical study from the standpoint of society. As Hanus well says: education should promote dominant educational interests and powers; but these interests and these powers should be made subservient to life's serious purposes and make it possible for the individual to participate in the refined pleasures of life. There must be intelligent and active participation in human affairs.

The great social studies are history, government, and economic science. It is a lamentable fact that so many men are at the mercy of the agitator because they have no sure foundation in a knowledge of history and economics.

Hamilton Mabie says: "It is quite impossible to understand our time, our government, our social institutions, the thought and feeling of our age without a knowledge of history. The lack of historical knowledge is the reason why so many crude, ill-digested views are advanced in many fields and so widely accepted. The true reformer, the statesman, the man of constructive genius builds on the foundation laid long ago. In a self-governing country where the voice of the ignorant man is heard as freely as the voice of the wisest man, knowledge of history is of supreme importance. Indeed history is the background against the entire life of today, and no art or industry or activity can be thoroughly understood unless it is studied with that background in full view." It is true, as Dean Gregory said last evening, that history is as necessary to the race as memory is to the individual.[1]

Then from the very nature of the study itself and from its relations to great life interests to

[1] Dean Gregory's remarks are given above, p. 84.

be conserved, history must have a vital place in the curriculum of the technical school; and he is especially wrong who would limit the range of the studies in these schools to the compass of the following class yell which I heard facetiously given as the boundary of their vision:

> Horses, cattle, sheep and hogs,
> Turkeys, chickens, ducks and dogs;
> Feed 'em, fat 'em, make 'em thrive,
> Agriculture — nineteen five.

The present trend is toward the industrial professions; and the schools which prepare for these vocations are usually crowded, and the universities are finding it necessary to make provision for instruction along these lines.

There is great need for persistent watchfulness on the part of those who plan the courses for these technical schools that the training of the man and of the citizen be not lost sight of in the training for the vocation. The pressure of the business world, backed up by tempting offers of remunerative positions, is great; and the tendency is to eliminate everything from the courses of study which does not bear directly upon the vocation in hand. Quite frequently one hears it said: "What's the use of history? What's the need of literature?" So great is this pressure that it is difficult to hold men for their graduation. It not infrequently happens

that every one who is at all capable of managing affairs or gives evidence of proficiency is placed months before he receives his diploma. Since these same men go out into society and by virtue of their very proficiency in certain lines become leaders of thought and culture in the communities in which they live, the responsibility rests heavily upon the institution fitting them for their vocations to see to it that they shall be broadly, generously trained not only for citizenship and as members of the community, but that each may enjoy the largest life and be put in touch with its deepest inspirations.

So vital do I regard some of these great social and cultural studies to be that I would not leave them to the election of those who are too young or ill-advised to appreciate their importance, but I would make them required studies in every technical school curriculum.

Professor Isaac A. Loos: — We are next to hear from Professor Wilcox on *The Best Methods of Teaching History.*

Professor W. C. Wilcox: — *Mr. Chairman, Ladies, and Gentlemen*: This subject of the best methods of undertaking to teach history was never discussed by any person perfectly sane nor by any person insane, unless there was no hope of a perfect recovery. Indeed, this sub-

ject has been discussed from time immemorial with no results whatever. There is no method of teaching history. There is no method of making a silver purse of a sow's thistle or to lift a man by the straps of his boots.

There are two or three reasons why this subject is discussed in teachers' gatherings. The first one of these is the fact that the American teachers of any subject are judged by the success or failure they have of getting students to know. While the German professor is judged by the success he has in making students think he knows, the American college professor and the American kindergarten teacher are not judged by what they know, but by what they get the students to know. This is the true criterion in this country.

The second reason this subject is discussed is because the American student or learner is fundamentally utilitarian in his purposes. Whatever the American student ought to do, we have some notion of what the American student does do. He studies for a practical end; and the shining dollar is the end, whether or not it is justifiable.

The third reason is that the subject is unusually hard to teach. I speak from experience and from observation. There is only one

subject more difficult and that is the subject of English.

There are four general methods of handling history. First, the text book method, that is, all sorts of methods from handling children up to the college class room where teachers still use the text book. A man who can do that successfully is a genius. It is the safest method for the ordinary teacher.

The second general method is the source method. In one particular State, due to the activity of two prominent men, this method has been adopted in a majority of the high schools. This is probably the lazy method. As a method of study it is sublime. As a method of teaching it is a failure. It is a method of teaching that is deleterious.

The third method is the topical method. This consists in taking up the subject in hand and analyzing it.

The fourth method is the lecture method. This is varied from a meeting for informal chats up to the historical society where a formal lecture is given.

These methods may be used individually or combined, with now and then explanations. The class determines the method. Another element which determines the manner of teaching history

is the subject, whether it is American or English history or some economic subject.

Three elements determine success. Some teachers handle one subject by one method better than by another. But the three elements are: pupil, subject, and teacher.

As to method, two things fix it for the teacher: first, natural endowment; second, experience. The old statement is true that the teacher is born and not made. Experience is good but the career of the teacher who has no natural endowment is likely suddenly to terminate.

There are three things necessary in handling history whether it be for young or old. First, the analysis of material. If you use a text book, analyze it; if you give a lecture, present it in an analytical form. Second, the teacher of history must emphasize facts and not talk about philosophy. Third, emphasize a sane balance between the three fundamental elements — time, place, and person.

Professor Isaac A. Loos: — The discussion of this subject of *The Best Methods of Teaching History* will be continued by Mr. Seth Thomas, of Fort Dodge.

Mr. Seth Thomas: — *Mr. Chairman, Ladies, and Gentlemen*: When Professor Loos invited

me to discuss this subject I wrote to Professor Wilcox to find out what he was going to say. So I have written out my speech; and as I did not have time to commit it, as he has done, I shall read it.

Professor Wilcox has emphasized a fact in his paper with which I heartily agree. One cannot learn to teach history by studying methods alone. On the other hand, the study of method will not often spoil a good teacher of history. Being a good instructor depends more upon quick perception, inspiring personality, and thorough preparation than it does upon a skilful use of note books, maps, and the like.

In addition to natural endowment, there are two qualifications of the teacher which I regard as paramount to all others. Having these, one will acquire good methods early in his experience. The first of these is a comprehensive knowledge of history and its allied subjects, and the second is a clear idea of what he is driving at.

To the first of these propositions, no doubt, all will agree, although there may be some difference of opinion as to what and how many allied subjects should be required. Perhaps we can all agree, too, that the teacher should know what he is trying to do, but inasmuch as the whole problem of methods, in my opinion, hinges

upon this point, I shall discuss it at greater length.

The reason we teach history, aside from its purely cultural value, is to give to the student a knowledge of the essential elements of civilization as they have developed in the past, in so far as this work has not been assigned to other subjects in the curriculum. By this I mean the story of the development of national governments, of society, of religion, of wars, of wealth, etc. The teacher in the lowest grade should have this comprehensive purpose in mind and begin building the structure with the simple, concrete facts at his disposal. Upon such a groundwork each year there should be erected a concentric layer composed of more complex material, but not for a long while any more abstract.

Another observation which I wish to make at this point is that history should be presented and studied as the story of real living men and not as fiction. The most interesting thing in the world for children is the actions of men. The stories of animals and goblins may entertain them; but the tales of heroes will move them as nothing else can. For this reason emphasis has been placed upon the teaching of biography and myth in the lower grades. With reasonable modifications this may be continued much later

in the life of the student than has ordinarily been done. We do not lose our interest in individual men merely because we have learned to generalize in speaking of nations, of society, and of institutions. In fact, the best way to approach the group idea is by extending the biographical sketch to an account of home life and the family group.

I advocate, therefore, the extension of the use of simple concrete facts, as employed in the lower grades, to the high school and college courses in a larger measure than has been customary. There is a great change coming over the spirit of our age, which is working its way into the structure of our institutions, transforming our method of thinking and altering the values which we formerly placed upon the essential facts of history; a change which I believe will make it necessary to do some things now considered primary work in the higher grades, and which will bring down from the senior and graduate colleges some of the work which logically belongs in the secondary school.

I refer to two facts: first, the revolution in thought and in methods of study brought about by the theory of evolution, which has taught us to regard every event as developing out of an antecedent condition; and, second, the fact that in this country commerce and industry are

occupying a constantly increasing interest in our life. A century ago the people from whom we have descended were still struggling for political liberty, and their history chronicled the story of human progress toward nationalism and personal freedom. Since that time until recently we have been busy observing the expansion of these movements; but one who is studying history in order to prepare himself for citizenship, or in order to put himself in touch with life today, must also study the evolution of commercialism and industrialism. For this reason we must preface our ancient history with much that is now included in books on Anthropology and Archaeology, and we must place more emphasis throughout the history course upon the facts now treated in separate courses under the head of industrial history.

Both logic and pedagogy agree upon this point. Place in the hands of a fourteen-year-old boy a copy of Starr's *First Steps in Human Progress,* and let him compare it with the introductory chapter on the eastern nations found in most of our ancient histories written for use in the ninth grade. The former he will find both interesting and instructive, dealing, as it does, with the first stages of industrial and institutional life; while the second is dry, to say the least, and pretends only to give a perspec-

tive of a phase of life that cannot interest a boy until he has come by progressive stages to an understanding of the human element in it. This does not prove, of course, that an extended course in Anthropology should precede the study of Ancient History; but I cite it to show that many useful facts, especially those relating to home life, industries, government, etc., now included in the higher courses, should be placed at the beginning of the history course; while larger generalizations should be reserved for more advanced students.

Any method of teaching history which does not help the student to realize himself in the society or the institution which he is studying is not a good one. This simple realistic plan, therefore, which I am advocating may be applied to any of the lines of development which I have mentioned. In studying the history of wars especially, we have often been told that the campaigns are not essential, that *causes* and *results* are all that we need spend time upon. This may be true for the advanced student who in earlier life has learned the facts of history and is now studying only the philosophy of events; but one who is pursuing the history of a people for the first time must enter deeper into their life than this, or he will never have his mind stored with the facts necessary to the making of a philosopher.

He must learn not only the tactics of campaigns and battles, but he must so enter into them in imagination that he can see the flights of arrows and the charge of knights, or hear the boom of cannon and the rattle of musketry.

What I have been trying to say is that the teacher should aim to develop from their simple beginnings the essential elements of modern civilization; that this should be done in such a way as to preserve the idea of continuity; that the subject matter should be adjusted to the mental calibre of the student; and that the emphasis upon what is considered important is changing in this country, at present, from politics to commercial and social problems.

If a teacher will keep his purpose clearly before him, if he be a student, filled with enthusiasm for history, the method of the recitation, the assignment of lessons, and the use of note books and maps will be easily learned.

Professor Isaac A. Loos: — Professor Macy, of Iowa College, having arrived, we will now hear from him on the subject, *Local Government as a Key to General History.*

Professor Jesse Macy: — I wrote out a few pages of my remarks but I did not have time to commit them. We begin with the Greeks in

learning the philosophy of history. They organized the neighborhood.

The better part of the individual man is that part of his nature which he shares in common with his fellow man. Selfhood is realized in the fulfillment of right relations to others. This begins in the family, the clan, or the tribe. But the civilized man realizes his true self in the organized neighborhood or in the state. The Greeks have become the leaders of mankind in the true philosophy of life on account of their clear perception of the identity of the perfect man with the perfect state. With the Greeks the state was simply the organized neighborhood fulfilling all the functions of the general will. The Greek city-state comprehended the full round of religious, industrial, and political life in a simple neighborhood organization. In this small and easily understood organism the Greek realized himself. To fulfill his functions in a just state was to be his true self. The Greeks no more thought of contrasting the man with the state than they did of contrasting the man with his reason. The state was the realization of the man.

When the Greek city-states sought to federate with other states they failed and hence perished the Greek ideal. Switzerland furnishes

a good illustration of the successful federation of primitive organized neighborhoods. For generations the village communes in the Alps maintained their standing as free institutions. In the course of time communes were federated into free cantons, and finally the free cantons were federated into a free state. Switzerland thus illustrates the march of history from the primitive village to the larger and more comprehensive state. The villages formed the canton, the cantons formed the state, and the progress from the village to the federation was simply by the enlargement of the sphere of the citizen. The citizen of the canton was enriched in character and his political powers and sympathies were enlarged by his becoming a citizen of a state of larger area. Switzerland furnishes, perhaps, the best illustration in all history of state building by the process of federating the primitive villages into a state of larger area. In this the Swiss are contrasted with the Greeks who failed to federate, and hence the glory of the Greek city-state was tarnished by the conflict of city against city.

France furnishes an illustration of state-building of a different type. Here the primitive local institutions were destroyed by centuries of tyranny. The people lost all sense of loyalty to a locality. At the same time they were

instructed in the doctrines of Christian brotherhood. The leaders of the French Revolution, deprived of the conditions favoring local or special loyalty, developed a new sense of loyalty to the race. Humanity became the real and dominant factor. For many thousand years the race had been cursed and every hope of liberty destroyed by conflicts between warring cities and warring countries. The French Revolution proclaimed anew the doctrine of universal brotherhood. The Parliament of Man was to be established and the federation of the race secured. France was to be organized — not for France alone, but for mankind. This high ideal had in it power enough to accomplish the destruction of the agencies of tyranny which had crushed out of the French people the ordinary sense of loyalty to a locality.

The result is that in France when the people think of liberty they think of the central government at Paris, through whose agency their local tyrants have been destroyed. Such local liberties as the people now enjoy they have received at the hands of the central government. By a slow process the sense of free neighborhood life was destroyed by despotism; by a slow process this sense is being restored and enriched. The local liberties restored to the French link France

in a peculiar way with world politics and the interests of the race.

The revolution now in progress in Russia is in marked contrast to the French Revolution. In Russia there is still preserved a lively sense of local privilege. The primitive villages have not been destroyed. The conflict is waged between organized local areas, conscious of privilege, and a central government at war against local liberties. If peace is finally established through a gradual process of harmonizing the policies of the central and local governments, the movement will be described as evolutionary rather than revolutionary.

By whatever process it is reached the end is the same — an enlarged and enriched citizenship which includes local autonomy in harmonious coöperation with the organs of the wider area.

The Anglo-Saxon race has reached this common end by both the Swiss and the French process. *Magna Carta* is instinct with local privilege. So long as the charter filled the place of a political platform, local privilege received adequate attention. But in England, as in France, the warring factions of feudal lords tended constantly to encroach upon local liberties. Not only so, but as the wars became general and continuous, as in the Wars of the

Roses, they monopolized attention, so that local privilege was overlooked. Other centralizing tendencies appeared. The Tudor monarchy dominated every political factor. The intense interest in religion tended to obscure all interest in the details of local right. Finally, through the exigencies of class conflict, the House of Commons came to be exalted into a position of supreme authority. The people were trained to look to the House of Commons (as to a sort of special Providence) as their sole hope and source of liberty. In the meantime the Englishman lost his grip upon the ancient and venerable local institutions of *Magna Carta*. Instead of revitalizing these he prefers to receive, as free gifts from the House of Commons, a newly created Poor Law Union and practically newly created city, county, and parish councils.

The American colonies were founded before the centralization of power in the House of Commons was reached; and they furnished the occasion for a revival of the *Magna Carta* idea of the importance of local privilege. The colonists had suffered enough from the encroachments of feudal tyrants to give them an exaggerated sense of the importance of the local charter privileges. In America they found also a vacant continent, a field for building a vast empire founded upon the organized neighbor-

hood. The Swiss inherit local institutions whose origin is shrouded in the mysteries of the past. The Americans were already a trained and experienced people, and by conscious act they created new local institutions, or they adapted old institutions to new conditions. Out of their local institutions they formed the State. By the federation of States they formed the United States. In Switzerland and in America the prevailing movement in free government has been from the local area to the area of wider jurisdiction; while in France and in England the spirit of democracy first captured the central governing agencies and then proceeded to bestow upon the localities the agencies of free government.

America furnishes the most conspicuous example of the progressive formation of a great empire upon the basis of free local institutions. Each of the thirteen colonies was a training school in the federation of local institutions into a government of wider area. Every new State which has been added has repeated this history. First, there is a town, township or parish. Then these are federated into a county. The counties are made the basis for an organized territory; and later the territory becomes a State. For three hundred years the Americans have been practicing what the Greeks tried to do and failed to do. They have been maintaining their highly

cherished local liberties by the formation of governments of wider area with adequate powers to secure harmony among the parts. Through the agency of the State, harmony of action is secured among counties, cities, and towns. Through the general government of the United States harmony among the States is secured.

The model worked out in the United States admits of indefinite extension. The system has been adopted with varying degrees of success in every part of the new world and in Australia. There is no reason why the principle of federation should end with the separate independent states. The same motives which have led to the formation of a government at Washington to secure harmony among fifty States may lead to the formation of agencies representing all the republics of the new world to harmonize the interests of the American republics. Such an agency is now in process of formation under the name of a Pan-American Congress. By a like process of reasoning there is being established at The Hague a Conference and a Tribunal, whose object is nothing less than the federation of all the nations, with the ultimate fulfillment of the dream of poets, prophets, and philosophers — the Parliament of Man, the federation of the human race.

When, therefore, the child in an American school takes his first lesson in the local government of school district, township, county, or city he is mastering the materials out of which states are made, and becoming acquainted with the forces which act for the bringing of all the nations under the rule of just and equal laws. The American and Swiss method may be called the natural method for building the world state. It begins where the Greeks began, with the neighborhood state, which for a time was looked upon as complete in itself. Then, as the field of industrial and social interests became more extended, organs were created to fulfill the demands of these wider interests, leaving the neighborhoods in control of local matters. With each extension of industrial and political needs new organs are created to attend to them, always leaving to the governments of the smaller area the possession of powers already acquired. If new organs should be created to attend to the common interests of all the republics of the new world, each republic will still be left in essential control of all its local affairs. So also the world's Conference at The Hague may create effective organs for the enactment and enforcement of international law and still leave each particular nation in more secure possession of all its former privileges and powers. Americans take a lead-

ing place in this method of forming the world state, because the very structure of their own government furnishes a training school in universal world politics. The Hague Tribunal was in an important sense an American product. It was proposed by Americans, and is itself a sort of transcript of the Supreme Court of the United States. If our courts may be relied upon to settle all disputes between forty-five American States, why may not a court at The Hague settle disputes arising between all the nations of the civilized world?

Professor Isaac A. Loos:—Professor Macy's paper will be discussed by Professor Garver, of Morningside College.

Professor F. H. Garver: — I have listened with great interest to Professor Macy's paper. Ever since he issued, several years ago, his monograph entitled *The Institutional Beginnings of a Western State,* his utterances upon matters of political science have been received as authoritative.

Before proceeding farther, let me thank Professor Macy for his valuable paper and express a sense of the obligation under which he has placed this Conference for his contribution. I trust that nothing which I may say in

discussing the subject may be viewed as criticism just for the sake of criticism.

In the paper under review the author traced the rise of general governments in Switzerland, France, England, and America. He pointed out its absence in Ancient Greece and spoke of its present trials in Russia. He distinguished two types of nation-building, one followed by the Swiss and the other by the French, pointing out the likenesses of the American method to the former and of the English method to both. He built up federal and national governments from local institutions, and even ventured to erect the world state upon the federal plan, locating its permanent capital at The Hague.

Aside from this one excursion into the field of political speculation, the paper under discussion has emphasized that process of national development which may be called "Federalism." In other words, the author has found the most natural method of state-building to be from local institutions to general. The expansion of neighborhoods into Cantons and of Cantons into the Swiss Federation was cited. In America the stages passed through were shown to be more numerous, viz; neighborhood, town, township, county, territory, state, and nation. This is essentially the evolutionary view of the origin

of government. It recognizes local institutions as the germs of state and national life, as the "cells out of which the complex social institutions of the nation have grown," as the units from which national institutions have been built up. It asserts that local institutions are part of general history. With Edward A. Freeman it sees the "institutions of Massachusetts" as a "part of the institutions of the English people, of the Teutonic race, of the Aryan family."

Without having any quarrel with the evolutionary view of the origin of government, let me at the same time utter a word of caution. It is very well for us to say, in reference to our own country, that neighborhoods and towns make up the township, that townships make up the county, etc. But it is not so true for us to assert that towns *grew* into counties, counties *grew* into States, etc. Such a gradation as town, county, State, nation, etc., has great analytical value in showing us the constituent elements of the nation, or of the commonwealth; but we should be careful in giving the impression that it illustrates the historical order of growth, for this is not always true. It is true that settlements on the Atlantic coast grew into towns; these expanded into colonies; the colonies became States; and these uniting established the Federal government. But it is just as true that many

new commonwealths have arisen since then in the creation of which the Federal government has played an important part. Territories, also, have been established long before they had any local institutions or even settlers. In our own commonwealth of Iowa, counties have been created and divided into townships before settlers came into their borders.

It can be shown in the case of France that local communes make up the canton, several cantons the arrondissement, arrondissements the department, and departments the nation; but no one claims that the small local units gradually united and *grew* into the larger. The gradation, as said before, has an analytical value in that it shows the smaller political units into which the nation is divided; but in the case of France it does not show the order of historical growth.

It follows, then, that while it serves a certain purpose to speak of the "units from which national institutions are built up," we should be careful to make it clear that this does not mean necessarily that the lesser units grew into the larger, or that they are the older.

Thus far we have considered local government in connection with the origin and development of national or general government. But there is another general sense in which we can

consider the relations of the two sets of institutions, another sense in which local institutions serve as a key to general history, viz, as furnishing an *explanation* or *interpretation* of the *character* of the more general government. If, in any nation, you find that a large sphere of initiative has been left to the locality, you are comparatively safe to argue the liberality of the general government. But if the locality has little to say concerning its own affairs you can generally argue the centralization of power and perhaps its despotic exercise.

Taking local government as the key to general history without qualification is apt to lead us into trouble. With the United States as an illustration the question would naturally arise, which local institutions, or the local institutions of which State are to be taken as the particular key to the government of the United States? So much variation exists in the local governments of the different commonwealths that we are at once embarrassed for an answer.

These variations, which comprise in themselves a very important phase of our local history, have arisen from many causes. While the original colonies were settled as a rule from England, transplanting English institutions into new soil, it is yet true that they were settled at different times and by different classes. As a

result the local institutions transplanted by Massachusetts were different from those transplanted by Virginia; while those of Maryland differed from both. The motives in the settlement of the different colonies differed so radically that it could hardly help being reflected in their local institutions. Again, different nationalities came in larger numbers to some colonies than to others. New York in particular was settled by a different nationality. All these influences made for diversity of character in local institutions. There were also other causes. The treatment of the colonies by the mother country differed with the different colonies and had its effects upon their local institutions. But to my mind the greatest of all these influences was the effect of the new country, or the "wilderness" as some would call it.

The government of the United States is largely a compromise, showing the hand of man in the work of adjustment and adaptation, as well as showing growth and development from earlier forms. The institutions of the localities furnish us with the key to those of the general government, if taken collectively rather than individually. It is in this collective sense, chiefly, that local institutions *explain* and *interpret* the general government and the events of our common history.

In so far as local institutions were common to most of the colonies, they have impressed their character upon the general frame-work of the national government; but it is just as true that the variations in the local institutions have produced the compromises of the more general government.

The most important factors in nation-building are race, physical environment, and political inheritance. I count the first two of primary importance, the third of but secondary significance. If the physical environment is favorable and the race is capable it will claim the bequests of all past history as its own political inheritance. It will profit alike from past successes and past mistakes.

In ancient Greece the race was capable, but the physical environment was not favorable to the establishment of nationality; hence unity was not attained. In modern Switzerland the situation has been similar; but the modern world has ways of overcoming an unfavorable environment not known to the ancient world. The result can be seen in the preservation of local government in Switzerland at the same time that federation has been attained.

In France a strong race found a territory physically one in character; hence national unity was early attained. Despotism set in, and even

today one of the chief characteristics of the French government is its centralization.

In Russia (European) the physical environment has been favorable to national unity but the race is not so capable.

The Anglo Saxons, both in England and America, have always been a capable race with an instinct for picking and winning the best territories. And these territories, though generally favorable to national unity, have always contained enough diversity to preserve local institutions. Proud of their own political inheritance, they have profited also by the history of others. The results have been unsurpassed.

PROCEEDINGS OF THE CONFERENCE ON THE WORK OF LOCAL HISTORICAL SOCIETIES

Frank E. Horack, Presiding

THE CONFERENCE OF LOCAL HISTORICAL SOCIETIES

[In the Hall of Liberal Arts Room 203]

At two o'clock in the afternoon of Thursday, March the twenty-first, the Secretary of The State Historical Society of Iowa, Dr. Frank E. Horack, who had been asked to preside, called the Conference of Local Historical Societies to order in Room 203 of the Hall of Liberal Arts.

Dr. Frank E. Horack: — This is a conference of representatives of local historical societies in Iowa, called to meet under the auspices of The State Historical Society. Indeed, it is the purpose of The State Historical Society to hold conferences from time to time with representatives of the local societies which are enrolled as Auxiliary Members of the State Society. Besides the representatives of local historical societies, we are to be honored at this Conference with representatives from the Davenport Academy of Sciences and the Sioux City Academy of Science and Letters.

I will call upon Professor Benj. F. Shambaugh to state the purpose of this meeting and to read a communication from Mr. Charles Ald-

rich, the Curator of the Historical Department of Iowa.

Professor BENJ. F. SHAMBAUGH: — By providing for the affiliation of local historical societies through auxiliary membership, The State Historical Society of Iowa hopes to keep in touch with those who are interested in the preservation of the materials of our local history. It is, moreover, the desire of the State Society to be useful and helpful to the local societies. We should aim to work together in our efforts to collect, preserve, and publish the materials of State and local history. The success of our cause will depend largely upon the extent and the spirit of our coöperation. Today we meet to talk about our organizations, our work, and our plans. It is hoped that this informal Conference will give us added courage, confidence, and enthusiasm in our efforts as well as ideas and suggestions for carrying on our work.

I have been requested to read the following letter from Mr. Charles Aldrich, of the Historical Department of Iowa: —

Des Moines, Iowa, 20 March, 1907.

MY DEAR SIR:

I wish to tender to you, and through you to The State Historical Society, my sincere thanks for the kind invitation with which I have been honored to be present at the ceremonies attending the celebration of the Semi-Centen-

nial of the Adoption of the Constitution of the State. It would afford me very high pleasure, indeed, to accept this invitation and be present at the various meetings which have been projected. The condition of my health (which is just now especially aggravated by impaired sight) prevents me, however, from enjoying this great pleasure.

I wish to offer to The State Historical Society of Iowa my sincere congratulations upon the fact that it has reached its half century mile stone. I have known it from the beginning, and I have admired (especially in these later years, when I came to a fuller knowledge) the wisdom, persistence, and courage of its founders. I know that they labored on, never looking backward, during the day of small things in Iowa, when it was almost impossible to secure even a slight appropriation from the legislature for library or historical purposes. A better day has come, and no one rejoices over it more heartily than myself.

In default of my ability to be present I will attempt, in accordance with your request, to briefly summarize the labors and aims of the Historical Department of Iowa, with which I have been connected from its inception. The efforts of this Department have mainly been directed to the collection of historical data relating to our own State and the territory of the middle west of which it originally formed a part. We can not boast of a fifty years' record. The real beginning of the Department was in 1884, when the gift of my Autograph Collection was accepted and accorded by the Trustees a place for exhibition in the State Library. The Department was organized by act of the General Assembly in 1892 — only fifteen years ago. While I am aware that our work is yet at the threshold, I believe I may claim that it has profoundly affected public sentiment. The public has advanced from an indifferent attitude to one of keen interest in historical work. This is

evinced by many facts too pronounced to be ignored. I may point to the magnificent Historical Memorial and Art Building, erected at a cost of nearly half a million dollars; to the organization of many country historical societies, the movement in behalf of which was started in the pages of our *Annals of Iowa*; to the building up of several of the choicest collections in various lines of Iowa history, newspapers, and museum materials; and to the sentiment which has so rapidly developed in favor of a Hall of Public Archives as a prominent part of our work.

Our new Historical Memorial and Art Building is an object of especial pride, not alone to those who have been connected with it from the beginning, but to the people of every county in the State. Architecturally it has proven a great success. The universally favorable comment of all visitors during the course of erection has proven their confidence and satisfaction in the modern and substantial construction and the monumental effect attained. The structure is purely classic, of the Ancient Roman Period. Less clumsy than the Greek and less ornate than the modern Renaissance, it is, with its quiet dignity, in happy sympathy with the neutral white of the Iowa stone of which it is built.

In all the efforts which have had their origin in Des Moines, we have had the hearty coöperation of The State Historical Society at Iowa City. There has been no thought of advancing the interests of either at the expense of the other.

If in the future we can make progress in and enlarge upon the lines of work already begun and marked out, I shall be well satisfied. Very faithfully yours,

CHARLES ALDRICH.

Prof. F. E. HORACK,
Secretary of The Iowa State Historical Society,
Iowa City, Iowa.

I am very happy to take part in the program of the Conference by reading this letter; and I move that we send our hearty good wishes to Mr. Aldrich.[1]

Dr. Frank E. Horack: — One of the first county historical societies organized in this State is represented by Mr. Frederick M. Smith, of Lamoni. Mr. Smith will report from the Decatur County Historical Society.

Mr. Frederick M. Smith: — I desire to pay tribute to the indefatigable worker from whom we have just heard. Fifty years from now we will appreciate the work of Mr. Aldrich. We do not fully appreciate it now. Indeed, I do not believe we can comprehend its real significance at this hour. Our inspiration for work in Decatur County came from Mr. Aldrich. Before I was aware that a single county society existed in the State, I thought why not have one affiliated with the State Society. Once while in Des Moines I mentioned the matter to Mr. Aldrich. Stimulated by his encouragement we proceeded. The very short constitution of our Society we secured by greatly abbreviating and condensing a printed copy of the constitution of a Pennsyl-

[1] This motion was seconded, put, and carried unanimously.

vania society, the copy being furnished by Mr. Aldrich.

The learned lecturer of last evening in his address told us that great things come from long infancy. This being true there is hope that the Decatur County Society may some day become a great institution.

We organized in 1901 with only a few members. The small number of members, however, was not necessarily discouraging; for, after all is said and done, the work accomplished will depend largely upon a few members. But soon after the organization of the Society our officers were widely scattered, one officer being at one time in Maine, while another was in the Philippines. While nominally a resident of Lamoni, I was home but three weeks in two years.

One of my chief objects in coming to this Conference is to get ideas and then go home and infuse them into others. I heartily favor extending the work of the local societies and the affiliation of local societies with the State Society.

The greatest difficulty encountered in Decatur County is to get people to write. The promise that their work will be preserved is, perhaps, the greatest incentive to the old settlers to write what they know about the early days. I am constantly urging the older residents of Decatur County

to write their memoirs. They will respond when we are able to promise to publish what they write. We have a rich and varied local history in Decatur County. Slavery alone is a subject of surpassing interest in our local annals.

I hope to carry home the enthusiasm of this Conference and infuse it into our local organization.[1]

Dr. Frank E. Horack: — Mr. J. W. Ellis, of Maquoketa, an enthusiastic collector, and now the Curator of his county historical society, will report from the Jackson County Historical Society.

Mr. J. W. Ellis: — Our experience in Jackson County is somewhat different from that related by Mr. Smith. In our county too many want to contribute, some offering a whole book in one contribution.

The Jackson County Historical Society was organized on April 25, 1903, at a meeting called by Mr. J. W. Ellis, at his office in the city of Maquoketa. At this meeting a committee was appointed to draft a constitution and by-laws and report the same at a meeting to be held on April 29, 1903. At this meeting the constitution

[1] On June 1, 1907, two months after the Conference, the Historical Society of Decatur County was reorganized and enlarged.

and by-laws were presented and unanimously adopted. After fixing Thursday, May 7, 1903, as the time for electing officers for the ensuing year, the meeting adjourned to that date. At the appointed time the following officers were duly elected: President, D. A. Fletcher; Vice President, M. T. Fleming; Secretary and Curator, J. W. Ellis; and Treasurer, Harvey Reid. D. A. Fletcher, George Mitchell, and J. W. Ellis were elected to prepare papers on the *Unwritten History of the Early Days in the County,* to be read at the next regular meeting which was to be held at the same time and place as the meeting of the pioneers and old settlers.

On July 4, 1903, a joint meeting of the Historical Society and the Pioneer Society was held at Maquoketa. On this occasion several papers containing valuable historical matter were read and filed for preservation. The Historical Society also participated in the annual meeting of the Pioneer Society in 1904. On December 12, 1904, the regular meeting of the Historical Society was held and papers were read by Harvey Reid and J. W. Ellis. The officers elected at this meeting were as follows: President, Hon. G. L. Mitchell; Vice President, H. S. Little; Treasurer, Harvey Reid; and Secretary and Curator, J. W. Ellis.

At the joint meeting of the Historical Society and the Pioneer Society the problem of marking the grave of Col. Thomas Cox, a pioneer lawmaker, was discussed and a committee appointed to take the matter in charge. The committee found upon investigation that the grave of Col. Thomas Cox was marked by a hickory tree, under which he had been buried in November, 1844. This was on the farm or claim then owned by him. The committee found that the grave was in a field that had been cultivated for years. The party who owned the farm objected to having any kind of a monument or any permanently marked place in his field. Inasmuch as there had been no reservation of land for the grave, the committee abandoned this place and secured from the Mt. Hope Cemetery Association, at Maquoketa, one of the best lots in the cemetery. This lot was donated by the Association to the Historical Society.

On the sixteenth day of June, 1905, Messrs. W. C. Gregory and J. W. Ellis, of the committee, took a force of men and drove out to the grave, exhumed the remains of Col. Cox, which they found in a black walnut coffin, and caused the same to be removed and reinterred in the lot at Mt. Hope Cemetery. Mr. W. F. Jones donated to the committee a glacial bowlder weighing about twenty tons. This was mounted on a con-

crete foundation on the lot. On the fourth of July, 1905, this unique monument was dedicated with imposing ceremonies. The occasion was one long to be remembered. Many distinguished people and pioneer law-makers from different parts of the State were present; and among other distinguished guests was Dr. William Salter, who, having preached the funeral sermon of Col. Cox in the year 1844, now took a leading part in the dedicatory ceremonies.

The Jackson County Historical Society was incorporated under the laws of the State of Iowa on June 20, 1905. In January, 1906, the Society issued its first publication under the title, *Annals of Jackson County, Iowa.* Several numbers of the *Annals* have since been issued. Copies have been sent to local historical societies, public libraries, and into several States. Number four of the *Annals of Jackson County, Iowa*, will be issued in April, 1907. On January 29, 1907, the Society held a public meeting, at which eight papers were read on subjects selected by the Curator. One of these papers was especially designed for an important purpose. Hon. W. C. Gregory read an eloquent paper on Ansel Briggs — an old time neighbor, a pioneer of Jackson County, a pioneer law-maker, and the first Governor of the State of Iowa — which brought vividly before the minds of the audience the fact that the re-

mains of Iowa's first Governor still repose in an unmarked grave in a cemetery at Omaha, Nebraska.

On January 31, 1907, a meeting of the Board of Directors of the Historical Society was held at the office of the Curator, and a resolution was unanimously adopted by the Board memorializing the present General Assembly of Iowa to appropriate twenty-five hundred dollars to help defray the expenses of the Society in bringing to Jackson County the remains of Governor Ansel Briggs and erecting a suitable monument commemorating his services to the State. This resulted in the introduction of a bill by Senator Thomas Lambert in the Senate for the appropriation of one thousand dollars.

The Society has accumulated a great deal of historical matter consisting of books, papers, and autograph letters, and is growing in membership and resources. But while the membership of the Society is increasing, it is sad to relate that five of the nine original promoters of the Society have been called to that bourne from whence no traveler returns.

Dr. Frank E. Horack: — The President of the Madison County Historical Society, Mr. H. A. Mueller, will report from that organization.

Mr. H. A. Mueller: — It is some time since I became interested in local history. When I was a candidate for a county office in 1900 I became somewhat acquainted with the history of Madison County. It was my custom at that time when I met a man to find out whether he was a Republican or a Democrat, and how long he had lived in the county. Thus I became pretty well acquainted with the history of Madison County. When I was elected County Auditor I examined the county records and became still more interested in our local history. In talking with men about the old water mills established in our county I would often get different stories. On going to the records I would finally arrive at the facts.

Madison County was settled in 1846. And so we have realized that if we do not collect the material for our history soon we will not be able to collect it at all. Some of the facts are already lost. After talking the matter over with Mr. John C. Parish a few years ago, it was decided to call a meeting, which was held at Winterset on March 4, 1904. At this meeting only five or six persons were present. We appointed a chairman and a committee to draft a constitution. Then we began looking around for somebody to write something. We wanted to have the facts of our local history related by the people who had first-hand information.

After making arrangements with the Trustees for a room in the public library at Winterset, we began collecting papers that in any way related to Madison County or to persons who had ever lived in Madison County. We have been collecting the constitutions of the different organizations in the county and the programs of the Old Settlers' Meetings and other similar gatherings. A few historical relics have also been collected. For example, we have acquired an old coffee mill, an ox yoke, a grease lamp, a candle mould, stick, and snuffers, flax hackle, a spinning wheel, etc.

Two books, histories of Madison County, were published in 1869 and in 1879 respectively. These have been added to our collections. Maps illustrative of Madison County have also come into our possession. A map of Iowa for 1848 shows that at that time the town of Winterset had not been laid out.

In collecting the materials of local history one must be persistent if results are to be secured. We wrote to a man in Indiana. He said, "you are very persistent," but finally furnished the data we wanted. Hon. E. H. Conger, who was County Supervisor in 1869, ex-Governor Orman, of Colorado, and others have given us substantial assistance.

The following papers have been prepared and read before the meetings of the Historical Society of Madison County:

History of the Madison County Mutual Insurance Company, by George Storck; *History of the Irish Settlement of Madison County*, by James Gillespie; *History of the Madison County Sunday-School Association*, by M. C. Leinard; *Indian Villages and Favorite Camping Places in the Northeast Part of Madison County*, by A. J. Hoisington; *The Superintendents of Schools and Their Work in Madison County*, by T. H. Stone; *History of the Grange in Madison County*, by Ezra Brownell; *The Trials and Triumphs of Pioneer Life*, and *A Short Sketch of the Life of A. J. Hoisington*, by E. R. Zeller; *The "Big" Board of Supervisors of Madison County, History of Horticulture in Madison County*, and *How the First Court House was Taken by Force*, by W. H. Lewis; *Early Schools, Religion, and Politics*, and *My Recollections of the Big Snake Hunt of 1848, History of an Early Settlement on Middle River*, and *Reminiscences and Early Experiences*, by W. S. Wilkinson; *Early History of Madison County*, and *Early Post-Offices of Madison County and their Post-Masters*, and *The Manufacture of Maple-Sugar, and the Location of Early Sugar Camps in Madison County*, and *The Grist and Saw Mills Operated by Water*

Power in Madison County, and *History of the German Settlements in Jefferson Township*, and *History of the Madison County Agricultural Society*, by H. A. Mueller.

Dr. Frank E. Horack: — From the Poweshiek County Historical Society we are to be favored with a report by the venerable Professor L. F. Parker, of Grinnell.

Professor L. F. Parker: — I have been interested in listening to these reports from local historical societies; and I will say a word about the society which is in Poweshiek County. The earliest historical society was located at Grinnell and was established in 1894. We did not organize a county society until in 1905.

Poweshiek County was first settled by men from the South. Most of them came from along the Ohio. They came by the river route, or on horseback, or on foot. These men came to work, and they put on buckskin and lived in log cabins. Of this type of men it has been said that they left civilization behind them. Upon their arrival they began at once the work of building homes. They did not write much. The Yankees came in 1854. When you get Yankees together they talk, and sometimes write. Grinnell is a Yankee township, and she has written herself up pretty well. Mr. J. B. Grinnell, who founded the town of

Grinnell, was an omnipresent man. When he went anywhere he told about it. The newspapers knew of it and all about what he was going to do. This publicity was valuable to the town. The southern part of the county had no such herald.

In 1894 we first asked representatives of the older residents to write the histories of their families. We have a very good collection of histories of the early families written largely by the women. This material is preserved in the public library at Grinnell.

Our first newspaper was not established when the county was thrown open to the whites, but some years afterwards. Within a few years several of the best writers among the pioneers have died. We can not get very satisfactory reports from some of the first families.

The Poweshiek County Historical Society has had four meetings since its organization. Such men as Professor Macy, who came to the county fifty-one years ago, are among our members; and such men as Dr. J. Irving Manatt, of Brown University, and Mr. Freeman S. Conaway, and Mr. A. A. Reams, former residents of this county, have furnished most valuable contributions to our collection. Among our earliest settlers it is difficult to find many contributors. Some do not remember material events, and they often fail to get the dates correctly. The first

newspaper was published in our county in 1857 — fourteen years after the settlement was made. Of the preceding period there is no record, except in official publications. Of the early volumes of this first newspaper we can find only now and then a number. The second paper was established in 1868. Our greatest anxiety is to get papers for this early period.

At the meetings of the Society there is usually an attendance of from twenty-five to forty persons. At one time we made an agreement with a publisher to issue a history of the county; but after all arrangements were made and a writer secured, the publisher thought our county was too small.

I am greatly interested in this State and local historical work. I am interested in the men who have given to Iowa character and a broad civilization. They are the men who have laid the foundations of our civilization. It is sometimes said that the pioneers were uncivilized. Some were, and some were not; and some of both classes survive even east of the Mississippi! I once took a list of twelve of those in our county who pay the largest taxes, and I found that every one except a woman began with nothing except their hands. One is now worth two hundred and fifty thousand dollars. This is very encouraging

to the poor boy, and to those who fear that a man whose coat is out at the elbows is near savagery.

It would be of the highest interest and greatest value to gather the history of each county of our State. When we gather together the annals of the heroes and heroines of local history we shall possess something of real value.

In our historical meetings we talk of politics, religion, or anything we please. We say just what we think. Slavery did not exist in our county as an institution. Our people were known as Abolitionists; and yet there was a slave in Poweshiek County in 1855. A family brought him from Maryland to be freed. It is the purpose of the Poweshiek County Historical Society to collect and preserve local history whether it is luminous or shadowy.

We have discovered the revised constitution of a "Claim Association" which was drawn up three years after the organization of the county. Such original documents are objects of special search.

Dr. Frank E. Horack: — The Davenport Historical Society will report through one of its charter members, Mrs. Maria Purdy Peck, of Davenport.

Mrs. Maria Purdy Peck: — The Davenport Historical Society was organized at a meeting

held at the public library in Davenport, on the evening of June 4, 1906. The germinating incident was the publication, on October 22, 1905, of a special edition of the *Davenport Democrat* in celebration of the fiftieth anniversary of the establishment of that newspaper. This edition had little to say about these later days, but dealt almost wholly with the past, presenting considerable original historical matter and many communications reaching back to matters half a century and more in the past. The interest of the community was intense; and numerous citizens, with this instance of high values in the unworked mine of historical treasures before them, began to talk seriously of the importance of organizing for the preservation of this historical material which grows more precious as time rolls on and carries it farther from our reach.

On the evening of May 22, 1906, a meeting of an even dozen ladies and gentlemen of Davenport was held at the residence of Mr. B. F. Tillinghast, editor of the *Davenport Democrat*, and the organization of such a society was discussed. The outcome was (1) the determination to proceed to call a public meeting of all persons interested and (2) the appointment of a committee which was charged with the preparation of a constitution.

The public meeting which was called by this committee on June 4, 1906, was attended by about thirty-five men and women — some of whom were pioneers, some children of early settlers, and some quite new comers, but all were interested in the local history of Davenport and Iowa. Mr. C. E. Harrison was called to the chair. A draft of a constitution (largely modeled after that of the Chicago Historical Society) was submitted by Hon. C. M. Waterman, chairman of the committee, read section by section, and adopted with occasional amendments. The organization was completed by the election of the following officers: President, Professor H. E. Downer; First Vice President, Hon. C. M. Waterman; Second Vice President, Hon. C. A. Ficke; Secretary, J. E. Calkins; Treasurer, Professor A. F. Ewers; Executive Committee, Mrs. J. J. Richardson, Miss Elizabeth D. Putnam, J. E. Hardman, Dr. C. H. Preston, C. E. Harrison, Mrs. Maria Purdy Peck, Dr. August Richter, and B. F. Tillinghast. The preparation of the by-laws of the Society was referred to the Executive Committee.

On the evening of November 4, 1906, a public meeting was held in the public library and addressed by Professor B. F. Shambaugh, of the State University of Iowa. Professor Shambaugh was invited to talk informally upon the

opportunities of such a society, and especially upon steps advisable in the formation of a good working organization. His response was an enthusiastic and inspiring summary of the historic features of the locality and an hour of illuminating suggestion and advice, followed by a quiz.

The Davenport Historical Society has informally considered the holding of a loan exhibition; and the officers have in hand and in process of indexing a long list of incidents, now historic and invaluable as local material, from which it is hoped Davenporters may be prevailed upon to select topics for monographs, to be added to the collections of the Society. Other plans for activity in genuine work are not yet sufficiently digested to be presented or discussed.

Dr. Frank E. Horack: — From the Webster County Historical Society, Mr. H. M. Pratt, its Curator, will now make a report.

Mr. H. M. Pratt: — A report of the work of the Webster County Historical Society must necessarily be brief because of the recentness of its organization. However, since the Society began its career it has had all the ambitions and dreams of a much older institution.

The inception of the Society was the usual one — that of a small gathering of a few interested persons at the call of one just a little more

interested than the others. Following this a joint business and social session was held June 26, 1906, for the purpose of organization. Prior to the business session an interesting program, consisting of talks by five of the leading pioneers, was given. These talks on the early history of the city were illustrated by stereopticon slides made for the occasion by the Society.

The first work of the Society was to plan a big picnic for the pioneers of Webster County. This was held on Tuesday, August 7, 1906, at Oleson Park, being one of the days of the Chautauqua course. The occasion was in the nature of an anniversary of the arrival of the United States troops, who made their first encampment at Fort Dodge fifty-six years before. In the morning a short program consisting of pioneer reminiscences was given at the park. Following this was a social period and then an old fashioned picnic dinner. The Society furnished free coffee and free lemonade for all.

The afternoon program was opened by the raising of the stars and stripes on the spot where the old fort flag floated over a half century before. This feature of the day was in charge of the Fort Dodge chapter of the Daughters of the American Revolution, assisted by the Grand Army of the Republic, Company G, of the Iowa National Guards, and the Fifty-sixth Iowa Regi-

mental Band. The flag pole for the occasion was a permanent iron one, the gift of the Daughters of the American Revolution to the school board of the city. The remainder of the program took place on the Chautauqua grounds. Military maneuvers were carried out by the soldiers. The music was furnished by the Dunbar Concert Company and by the Fifty-sixth Iowa Regimental Band. The address of the afternoon was made by Professor Benjamin F. Shambaugh, of the State University of Iowa. Hon. Jonathan P. Dolliver, Iowa's junior Senator, acted as presiding officer.

During the day the Society had on the grounds a large tent in which were displayed their own collections and also a large number of valuable loan collections. A register was kept in which the pioneers wrote their names and the year of their arrival in the county. They were then appropriately tagged with the numeral of their year and with a souvenir silk badge. Altogether, the day was a most auspicious debut for the Society. The success of this picnic has made another seem desirable, and plans are being made for such a gathering this fall.

Since our pioneers' picnic the work of the Society has been principally that of collection. We have already gathered a considerable amount of miscellany, including programs, pictures, pos-

ters, and the like. We have a few interesting relics, and have the promise of many more as soon as we are able to care for them. The contents of several old attics have been given to us, and our spring house cleaning in these promise much. We have forty-five splendid lantern slides illustrative of the early history of Fort Dodge. Our library contains about two hundred volumes. In addition we have current files of the three Fort Dodge papers and of four of the county papers. We also have broken files of the earlier issues. The Fort Dodge chapter of the Daughters of the American Revolution has recently placed its library in the custody of the Curator for the public use, thus adding some thirty volumes to our library. There are in the possession of residents of the county many relics of early history and a considerable amount of material taken from the Indian mounds of the county. This material will doubtless become ours as soon as we can handle it.

We have for our use a room in the Fort Dodge public library; but we have neither sufficient shelving or display cases to properly care for our collections, nor funds with which to make purchases.

So far as publication is concerned we have done practically nothing, except in the line of a few interviews and sketches which have been

published from time to time in the local papers. In the local field some exceptionally careful work has been done in the past, but it is in the form of magazine articles or scattered pamphlets. This work should all be collected, edited, brought down to date, and published in book form.

Another thing which should be done at once by our Society is the gathering and publication of interviews with the early pioneers. In connection with this work there should be ascertained and mapped the pioneer sites of the county, such as the old trails, both Indian and stage, the early highways, and the first homesteads. There are in Webster County many Indian mounds; these should be located and mapped. Yankee curiosity has already opened most of them; but a few, however, are undisturbed. The early claim association of Webster County, of which the late Gov. Carpenter was Secretary, should be carefully investigated.

Our political, industrial, and commercial history has never been written. Therein one would find interesting and profitable fields. The history of the gypsum and coal mines and the changes which their development have wrought upon the character and characteristics of the community are worth the study of any economist or sociologist. In this work maps should always be used. In our county a study of the groups of

foreign born would be intensely interesting. Our military history would furnish a splendid field for research. Tales as interesting as fiction are those of the river land times, of the Cardiff Giant, and of the Spirit Lake Massacre. Nor will the historian in his search pass by the landing of the first steamboat at Fort Dodge, or the story of the stealing of the court house from the old county seat at Homer and the bringing of it to Fort Dodge in the night time.

Our Society has recently begun the gathering of material for an album of the pioneers of the county. It is our plan to have pictures of a uniform size, four by six inches, mounted on sheets, ten by twelve inches, of the loose leaf variety. Then, in connection with each picture there will be other loose leaves on which may be written or pasted matter in regard to the one whose picture it follows.

While our membership is not large, we have the working interest of a large number of the older and more influential people of the town and county. Our present officers are as follows: President, Mrs. J. P. Dolliver; Vice-President, H. O. Baldwin, Secretary-Treasurer, Mrs. C. B. Hepler; and Curator, H. M. Pratt. These officers, with the exception of the Vice President, constitute with two others, Hon. O. M. Oleson and Hon. L. S. Coffin, the Board of Directors.

The Board of Directors have the complete management of the affairs of this Society. In the absence of the President, the Vice President takes the vacant place on the Board. Our annual dues are two dollars.

Dr. Frank E. Horack: — The President of the first city or town historical society organized in this State, Mr. C. L. Lucas, of Madrid, will report from the Madrid Historical Society.

Mr. C. L. Lucas: — I have a short sketch of our Society which I will read. But I desire first to say that I am pleased to meet with the representatives to this Conference. I rejoice to know that so many are engaged in the commendable work of collecting the history of our beautiful State of Iowa. As I look around on the historic ground of Iowa City, and especially on the Old Capitol Building I am pleased. Of all the structures in the State of Iowa at the present time the Old Capitol Building is the most historic.

The Madrid Historical Society was organized on the first Monday in July, 1905, and is now less than two years old. There is, perhaps, no other town in the State, with only eleven hundred inhabitants, in which an historical society is to be found. The incipient thought and work which resulted in its formation were of only

two individuals. Its membership is still quite limited, for the reason that its projectors, acting on the maxim of Confucius, that "The cautious seldom err," thought it best to have none but faithful and earnest workers for the first few years of its existence. This precaution always avoids "kickers" and fault finders. The worst thing that can happen to an association of any kind is a number of faithless, incoherent, and fault finding members. Happily we have none of them in the Madrid Society.

The object for which our Society was organized is the gathering up of local history and historic relics and their preservation. While our progress has not been rapid, we feel satisfied over what we have accomplished and are encouraged to go on with the work. Our list of local historical sketches is considerable, and all are carefully filed away for future reference. Among our list of historic relics are a number which are of much local interest. We have a pair of hames which were used in drawing the first emigrant wagon to Boone County. Our first settler, C. W. Gaston, located on the east side of the Des Moines River, upon a beautiful tract of bottom land, about two miles west of the present town of Madrid, January 12, 1846. He was at that date twenty miles further up the Des Moines valley than any other settler. We have a piece

of timber which was taken from one of the logs of the cabin which he erected immediately after his arrival. We also have the first deed ever placed on record in the county.

The chief work of our Society thus far has been the placing of a monument over the grave of Milton Lott, the first person buried in the soil of Boone County. Milton Lott was a boy twelve years old. His father, Henry Lott, attempted to establish a trading post with the Sioux Indians at the mouth of the Boone River, going there in the summer or fall of 1846. In December of that year a raid was made upon the Lott family, and in his efforts to escape to the settlements by following the course of the Des Moines River on the ice, Milton Lott was frozen to death. His dead body was found and buried on the west bank of the Des Moines River, about four miles northwest of the present city of Boone.

As this death of Milton Lott was connected with an historic event, the Madrid Historical Society undertook the task of placing a small monument upon his grave. To make the object of erecting the monument better understood, the Society has published a small pamphlet entitled, *The Milton Lott Tragedy and Other Stories of Early Times,* which gives a full history in detail of this very thrilling incident.

During the coming spring and summer our Society will make an effort to learn something of the contents of two very prominent mounds on the west bank of the Des Moines River, three miles west of Madrid and near Elk Rapids. If we succeed in finding some relics of a prehistoric race, the fact will be made known in due time.

Another work which our Society has in contemplation is the publication of a book which will contain about four hundred pages. The book will be entitled, *Historic Sketches and Reminiscences of Early Times in the Des Moines Valley, Including a History of the Riverland Grant and the Trouble and Hardships it Brought Upon the Settlers.* Nearly all the material for this book has already been prepared and is now ready for the publishers. It will contain numerous interesting sketches never before written or published.

While the financial condition of our Society is not altogether flourishing, we are out of debt with a small balance in our treasury. The expenses of organization, the erection of the monument, and the publication of five hundred pamphlets were met by contributions of the members and the sale of pictures of the monument and the pamphlet.

We have not yet succeeded in becoming the owners of suitable quarters for our Society and its collections; but this matter is now the chief

thing under consideration among our most active members. Thus far we have used the offices of the President and the Secretary for our quarters.

In conclusion permit me to say that we have met with many people who have no taste for history or its preservation. They are always ready to discourage those who have an inclination for this kind of work. Numbers of them are to be found in all communities. If their way of doing things were followed out, future generations would know as little of the present time and of the things that are now being done as we do of the races that have preceded us. The course to pursue is to pay no attention to the discouraging words and discouraging attitude of those people who have no love for history or its preservation. Give no heed to anything they may say or do, but go on with the work. Discharge your duties faithfully and well, and the blessings of Heaven and the praises of all grateful people will rest upon you.

Dr. Frank E. Horack: — A scientific society which has concerned itself with historical matters as well as with science is the Sioux City Academy of Science and Letters. Mr. E. E. Stacey, of Sioux City, will report from the Sioux City Academy.

Mr. E. E. Stacey: — The Sioux City Academy of Science and Letters had its beginning in the Scientific Association, organized over twenty years ago by men whose names have been identified with the progress of the State. Mr. J. C. C. Hoskins, the first President, and Messrs. D. H. Talbot, E. H. Hubbard, and C. R. Marks were among the charter members and are still interested in the work. The list of members who have belonged since then is a long one, and to mention the illustrious names would be to include all. Among those whose lives have passed into history are Messrs. E. H. Stone, W. R. Smith, Geo. Wakefield, and John H. Charles.

Mr. Charles was President for many years; and to his memory the Academy owes more than to any other one person. An incident connected with his settling in Sioux City, fifty years ago, shows the characteristics of the man. It is related that he arrived in the midst of a fierce December blizzard. No railroads entered the place, and there were but few houses. The hotel afforded but scant protection from the storm. He had for a bed-fellow, on the floor under a buffalo robe, the only other guest wearing a white shirt. In the morning the kitchen and dining room were half full of snow and he had to look elsewhere for breakfast, in the pursuit of which he fell in with a Mr. Davis. They talked over

the prospects of Sioux City and the conditions under which the new comers were becoming discouraged and were leaving in large numbers. They decided to stay, Mr. Charles closing the conversation with "I'll be in Sioux City on the morning of January 1, 1900, and as the sun rises over the hills to the East, I'll say, 'Hail, old Fellow! I'm still here.'" On New Year's day forty-four years afterward, Mr. Davis had breakfast at Mr. Charles's house. You can guess what they talked about.

During the early years of its existence the Scientific Association had various meeting places, but on the completion of the library building in 1892 it was given permanent quarters in which it has since held its meetings.

In 1903 the scope of the Scientific Association was enlarged by having merged with it a society from Morningside College; and the new corporation was called, "The Sioux City Academy of Science and Letters." The purposes of the organization are shown by Article II of the Constitution: —

> The object of the Academy shall be: First, original investigation in Science, History, Sociology, and other branches of useful knowledge and the promotion of the study thereof; Second, the publication of the proceedings of the Academy and such original papers as may be deemed profitable; Third, the maintenance of a Museum and a

Library and to provide for public meetings for the delivery of papers and lectures.

The following partial list of papers read since the reorganization does not include many of those on scientific subjects which were also presented: —

Some Phases of the Early History of Sioux City.

Stories of Early French Settlers of Sioux City.

Ventilation in the Public Schools of Sioux City.

Mounds in Northwestern Iowa.

Indian Life on the Broken Kettle.

Some Defects in our Municipal Government.

Reminiscences of Northwestern Iowa.

History of the Formation of Iowa Counties.

Food Adulteration.

The Lead and Zinc Deposits in the Upper Mississippi Valley.

Bacteriology.

Fundamental Conception of Radio Activity.

Recent Alluvial Changes in Southwestern Iowa and the Antiquity of the Human Remains.

A book of the *Proceedings* of the Association is published every two years, two volumes having appeared up to this time. The last volume was made a memorial to Mr. John H.

Charles. These books contain, besides the proceedings, biographical sketches, bibliographies of Sioux City and Woodbury County authors, and articles of historical and scientific interest about which there is not time to speak. We are pleased to exchange copies of our publication with other societies.

The museum, containing minerals, fossils, mammoth remains, shells, birds, Indian specimens, historical relics, and curios, is a popular and growing feature of our work. The collections, valued at several thousand dollars, fill many large cases. Under the able direction of the Curator, Professor H. C. Powers, who devotes much of his time to this work, the museum is open twice a week and is freely visited by the general public. Classes from the public schools, especially the high school, attend with their teachers and find abundant material illustrating subjects of study.

The Librarian, Professor F. H. Garver, is performing a commendable service in forming a scientific library and making a collection of all sorts of valuable historical material.

The present year has been particularly successful. The membership is larger than ever before, the meetings have been well attended, the

museum has received large additions, and a volume of *Proceedings* has been published.

But we count these present things as but beginnings — our faces are set toward the future. We look for larger things in organization, equipment, and accomplishment. To further systematize the work it is proposed to arrange courses of study and investigation, requiring several years to complete, which will deal with our locality in four series of papers under the following general heads: Science, Anthropology and Ethnology, History, Economics and Sociology. In the logical working out of this plan, so that the individual papers fit into a connected whole, it is hoped to make a valuable contribution to the history of the city, county, and State.

Are you wondering whether we can execute these plans, whether we may sometime have a building all our own and an endowment, and whether the Academy will live to be a factor in the intellectual life of the future as well as a monument to the past? I beg to remind you that our leaders are the legitimate successors of such men as Mr. John H. Charles. At the glorious dawn of the next new century the Academy will be in Sioux City to hail the sun as it rises over the hills and the house tops to the East. And what they will talk about on that morning

will be too much to speculate upon in a ten minute paper.

In the name of the Sioux City Academy of Science and Letters, I wish to thank The State Historical Society for its kind recognition of our work, and in return we promise you our hearty coöperation.

Dr. Frank E. Horack: — One of the most active of the local historical societies of the State is the one with headquarters at Cedar Rapids. Mr. B. L. Wick, its President, will report from the Historical Society of Linn County.

Mr. B. L. Wick: — I know that you have been looking at your watches, and so I shall not detain you long. As President of the Linn County Historical Society I desire to call attention to the fact that we bring our material with us. We have brought to this meeting two of the most interesting gentlemen in the history of Linn County [pointing to Colonel Durham and Mr. Ellis].

The Historical Society of Linn County was organized in 1904. We now have a membership of one hundred and fifty, and have in the treasury three hundred and fifty or four hundred dollars. It is due largely to Mr. Charles Aldrich, of Des Moines, and to Professor Benj. F. Shambaugh, of Iowa City, that we have anything

like an historical society in our county. When the Society was organized we met with some opposition — because in our town money-making has been the first thing, other things come later. We had to draft into service butchers, bankers, farmers, and surveyors — men who never saw the inside of a college — and these men have given us assistance as well as furnished us means with which to carry on the work of the Society. Under the auspices of the Historical Society of Linn County an address was delivered by Colonel Sam'l W. Durham, who, although over ninety years of age, was yet able to describe the workings of that Convention as well as the color of the neckties worn by the seventy members of the Constitutional Convention of 1844. We had another address by Professor Norton, of Cornell College, who will complete the story of Mt. Vernon and of Cornell College.

Each locality in our county is represented in our membership. We are now collecting material on the Copperhead movement in Linn County during the war, as well as material on the early railway building of the State, especially the story of the promoters of these enterprises who made their home in Linn County.

It was the Historical Society of Linn County that first suggested the Cedar Rapids semi-centennial. I believe that the honor of that cele-

bration in a large measure belongs to the Historical Society. We are now publishing the *Proceedings* of that event, which occurred in June, 1906. It was on that historic occasion that a museum was projected; and it became so popular that it had to be kept open on Sunday during the week of the celebration. After the semi-centennial celebration was over, the museum became a permanent part of our Society. As compared to the State museum it is a small affair, but as a beginning it will serve to create an interest in the history of the old pioneer days.

We have in our county a number of parks, especially in Cedar Rapids; and these we expect to beautify with proper monuments and mementos of the early pioneer days. We expect to properly dedicate the first town site at Westport, platted in 1839, and also to preserve the oldest cemetery in the county known as the McLeod Cemetery, laid out in about 1840, a little to the north of our city. We also expect to purchase the ground upon which now stands the first frame house erected in Cedar Rapids in 1842 by John Vardy, and to retain this as the permanent home of our Society. We expect very soon, in conjunction with the Daughters of the American Revolution, to mark appropriately the grave of Mr. Clark, at Center Point, one of the eight or ten soldiers of the Revolution buried in this

State. The Historical Society of Linn County is willing to limit itself to the confines of the county. Here we shall find material enough for papers for the next fifty years.

Among our members are many of the old settlers who are willing to do their share of the work; and these men can accomplish much in preserving the old records and family papers. Colonel Sam'l W. Durham has planned to write his reflections of the early days in Iowa. He says: "I never reflected until I was forty. I have done nothing but reflect since I was eighty, and I hope to go on reflecting for at least ten years more."

The aim then of the members of our local Society has been to keep within the limits of the county and to chronicle and preserve, as far as possible, the history of the old settlers who devoted their lives to the up-building of the county and the scattered towns. We further hope to be able to have members, who can some time in the near future, by training and instinct, devote some attention to the botany and geology of the county. At the same time we do not propose to neglect the story which may be gathered from the mounds found along the banks of the Red Cedar — a story which has as yet not been told about these first inhabitants of Iowa.

Dr. Frank E. Horack: — Owing to the absence of representatives from the Davenport Academy of Science, the Boone County Historical Society, the Washington County Historical Society, and the Lucas County Historical Society, reports from these organizations will not be called for at this time but will appear in the published proceedings of the Conference.

Mr. C. M. Waterman (writing for the Davenport Academy of Sciences): — An Historical Section of the Davenport Academy of Sciences was organized in 1876 and continued to hold meetings every month until about 1880. Papers were prepared on incidents of local history. Many were on the life of Black Hawk and about Fort Armstrong and embodied the reminiscences of old settlers. A collection was begun of the early city directories, of the files of the daily newspapers, and of documents and autographs.

The meetings of the Section were gradually discontinued, but the interest aroused led to an increasing accumulation of the historical collections, consisting of documents, photographs and books, pewter and china, and miscellaneous relics.

Mr. W. C. Putnam, who had been chairman of the first Historical Section and who had always taken a great interest in Western history,

died in 1906. He left all his historical books, many of them very rare, and his autographs to the Academy. He also endowed the Academy with his entire estate. When this money is available in the course of a few years it will enable the Academy to begin again its active work along historical lines.

In the winter of 1906-7 interest was aroused by the visit of Dr. Reuben G. Thwaites, of Madison, Wisconsin, who delivered a lecture on *Black Hawk*.

Mr. Jno. M. Brainard (writing for the Boone County Historical Society) : — A detailed or accurate description of the early efforts looking toward the organization of an historical society for Boone County would at this day be disappointing; for the records, meager at best, do not extend farther back than August 23, 1889. They are contained in a well-worn, narrow-paged account-book with flexible paper sides and cloth hinge.

A prior meeting of those interested is indicated by a copy of the *Constitution of the Old Settlers' Association* (designated of record by the initials O. S. A.), containing seven articles, but omitting signatures or any record of their adoption.

Of real historic value, however, is a record

on the first eighteen pages of the book, containing the names of the eight hundred and twenty-one voters of Boone County (listed by townships and bearing the names and titles of the several election boards in each) who participated in the Presidential election of 1860 which placed Abraham Lincoln at the helm of state. The record is further supplemented by brief vital statistics on the margins against each name as "dead," "removed," and naming the locality when known. Incidentally, it may be stated that in proximity to the present receptacle for the Boone County historical records, lies a printed portrait of Abraham Lincoln, five and one-fourth by seven and one-half inches, accompanied by the words, "Abraham Lincoln — 1860," which was circulated as a "campaign document" during that memorable canvass.

If the record of the framers of the first constitution was neglected, that of the first meeting under it was not. It is brief, occupying but twenty of the narrow lines of the little book, and states that the first meeting was held at Jenkins' Grove (in Yell Township) August 23, 1889; that it was opened by prayer; that the presiding officer made an address of welcome, which was followed by several short addresses from "Old-timers;" that there were songs by the Glee Club;

and that "the present officers were, by vote, continued for the ensuing year." It is signed by T. B. Holmes, as Secretary (the same person who is President of the Boone County Historical Society of the present day). Tradition carries the story that this pioneer meeting was further enlivened by an irruption of a bevy of coal miners, who on that day had left their labors below ground for recreation above with a few games of ball and whisky refreshment. In some way (the record is not specific) they entered the lists with a portion of the orators from the Old Settlers' stand, the result again verifying the Napoleonic adage that "the victory is to the heaviest battalions." In this case the lusty miners had the "battalions."

The constitution required a residence of twenty-five years in the county as a requisite for membership, and charged the Secretary with the duty of keeping a record of the name, age, acquisition of residence, of the annual meetings of the Association, where directed to be held, and of the expenses of such meeting, which were to be met by the "annual collection" to be taken on the ground at that time.

The first officers of the Association were: Chas. Goetzman, President; Thomas B. Holmes, Secretary; and "little" Jesse Davis, Treasurer. The "old settlers" of the early day were partial

in bestowing extra surnames, and without the word "little" the neighborhood would have been puzzled to identify the Treasurer.

There was no great formality in the matter of the addresses, which were always impromptu, comparatively short, and at times humorous. The speaker on the stand would arouse a train of reminiscent thought in the minds of his auditors, and often as he was taking his seat would be followed by a volunteer, who also "had something to say." There was not much polish in the deliveries, but they were fat with facts and often punctuated with keen Western humor. The addresses from the platform did not always command the full attention of the women in the audience, especially if held out of doors as was always the case if weather permitted. Some word from the stand would recall a thought of the long past and the bonneted head of the affected one would seek the face of her neighbor — and the personal discussion thus aroused would possibly last during the remainder of the session. Indeed, it often seeemd as though the major portion of the audience was thus gathered "in groups of three" or more.

A "basket dinner" (luncheon brought from home in a basket) was an invariable accompaniment on such occasions, especially by the people

from a distance, and was eaten on the grass under the shade of the trees.

The Twelfth Annual Reunion of the Association, held on August 5, 1889, was memorable for its recognition of the semi-centennial of the organization of Boone County. Formal papers were read: *An Historical Sketch of the County; The Pioneer Lawyer; Pioneer Merchant; Pioneer Press; Pioneer Farmer;* etc. The program seems to have been thoughtfully planned and ably carried out. The thought arises that there might well be added a paper upon *Necrology of the Year* by some one charged at the meetings with this prospective duty for the year to come.

The Fifteenth Annual Reunion was held jointly with the reunion of the surviving members of Company D., Veterans of the Thirty-Second Iowa Volunteer Infantry, it being the anniversary of their "swearing-in" on the same grounds for the War for the Union. The record is quite brief. Perhaps the intensity of recollections upon such an occasion was impossible to record. It must have been a day of "sentiment" chiefly.

The record of the Sixteenth Reunion is given in but four lines; and that of the year following not at all. Evidently the time had arrived for organization on new lines.

In July, 1906, steps were taken to re-organize under modern methods. Some preliminary meetings of members who had shown continuous interest in the Old Settlers' Association were held; and committees were appointed on organization, the framing of a constitution, and the preparations for holding a mass meeting of the old settlers at an early day. The result was the adoption by the mass meeting, held August 19, 1906, in the court house park, of a constitution and by-laws, following closely the model constitution published by The State Historical Society, at Iowa City. What the fruits may be, it is too early to predict. There are some embarrassments arising from lack of funds (an incident not unusual under similar circumstance with the launching of an association not designed primarily for gain) which it is believed may be successfully overcome. The enterprise has the hearty approval of the pioneers and the general public, which it is believed is an earnest of its eventual success.

Mr. Marsh W. Bailey (writing for the Washington County Historical Society):—On June 6, 1905, Howard A. Burrell, David J. Palmer, A. H. Wallace, John Alex. Young, Samuel W. Neal, Charles H. Wilson, Charles H. Keck, Charles J. Wilson, Henry M. Eicher, Alex. R.

Miller, J. Orville Elder, Frank Stewart, Wm. B. Bell, A. Anderson, Joseph H. Hull, Hiram Scofield, and Marsh W. Bailey met at the Jane A. Chilcote Library and organized the Washington County Historical Society. The organization was effected by adopting articles of incorporation under Section 1642 of the *Code of Iowa,* 1897.

The business and object of this corporation were declared to be to discover, collect, embody, arrange, and preserve in authentic form, a library and museum of original manuscripts, books, pamphlets, maps, charts, surveys, field books, genealogies, papers, letters, journals, paintings, pictures, statuary, relics, souvenirs, and other articles and materials illustrative of the United States, and particularly of Washington County, and to save from oblivion the memory of its early pioneers; to obtain and preserve narratives of the exploits, perils and hardy adventures, to secure facts and statements relative to the history, genius and progress of the American people; to faithfully exhibit the antiquities and past and present resources of the United States, State of Iowa, and Washington County; and to aid in the publication of such collections of the Society as will be of value and interest to the present and succeeding generations, and establish and illustrate the history of

Washington County and any other portion of the United States; and, to perform such other duties and functions as are in keeping with the general object of the Society.

At this meeting the following officers were elected: President, Marsh W. Bailey; Vice President, Charles H. Keck; Secretary, Alex. R. Miller; Treasurer, John Alex. Young; Curator, Charles J. Wilson; Directors, Howard A. Burrell, A. H. Wallace, Frank Stewart, Wm. B. Bell, Samuel W. Neal, and Charles H. Wilson.

The Board of Supervisors of Washington County set apart and redecorated a commodious room in the Court House for the use of the Society. In this room have been gathered together and placed in suitable cases the diaries of pioneers, account books and property lists, old addresses and sermons, letters written by pioneers to relatives and friends in the East, newspapers and magazines, photographs and pictures, maps and atlases, books and pamphlets, documents and manuscripts, souvenirs and curios, relics and any other articles or material which relate to any of the early pioneers or the history of the county.

Hon. Charles K. Needham has kindly presented the Society with the office file of the *Washington Gazette,* which ceased publication in 1906. This file is very valuable, among other

reasons, for it contains a history of Washington County written by Hon. N. Littler.

Hon. Irving C. Keck has donated to the Society a large assortment of books and papers including a set of the *Annals of Iowa* in which appeared a history of Washington County which he wrote many years ago when many of the incidents therein referred to were fresh in his memory.

The Society has collected the names of the leading citizens of the county during its history; and has selected the person best fitted to write a suitable biography of each. These several biographical sketches will be collected and filed in the Society's room; and from them and other material it is hoped the Society will soon publish a history of the county, which will contain much useful and authentic information about Washington County and the men and women who have helped make this part of the great Commonwealth of Iowa.

Mr. Warren S. Dungan (writing for the Lucas County Historical Society): — This was the first county historical society organized in the State of Iowa. It dates from June 10, 1901.

In the spring of 1901 Mr. Charles Aldrich, Curator of the Historical Department of Iowa, suggested to the writer the formation of county

historical societies in every county in the State. He said the matter was called to his attention by seeing in some newspaper an account of the organization of such a society in Washington County, Pennsylvania. He suggested that it would be quite an honor to be the first county in our State to thus organize, as he had no doubt that in due time every county in Iowa would have such a society. He further stated that he had urged the people of his own county to make an effort to secure this honor; but if Lucas County should first organize it would have the honor.

It was soon after this that he sent me the account of the organization of the society in Washington County, Pennsylvania, including its constitution and by-laws.

About the same time I received a letter from Miss Margaret W. Brown, whose home was in Chariton (though the letter was written from Des Moines where she then was and still is connected with the Free Traveling Library of Iowa) earnestly approving Mr. Aldrich's views and asking me to appoint a meeting of the citizens of Chariton at some convenient day in the near future at which the proposition of forming such a society should be submitted for their consideration. She also suggested that a constitution and by-laws should be drawn up in advance to

be acted upon in order to save time in case the proposition was favorably considered.

Prior to that time two societies had been organized in this county, namely, "The Lucas County Pioneer Association" and "The Lucas County Veteran Association," of both of which I was the Historian. In that capacity I had been collecting the early and military history of the county. And so I called a meeting of citizens generally and at the same time sent personal invitations to some whom we wished especially to enlist in the matter. The meeting was called for June 10, 1901. The following persons appeared and took part in the meeting: Mr. Smith H. Mallory, Mr. Thomas Gay, Mr. R. H. Hasselquist, Mr. B. F. Bates, Mr. Warren S. Dungan, Mrs. F. H. Boynton, Miss Margaret W. Brown, and Miss Emma McCormick. The meeting was temporarily organized by selecting Mr. Thomas Gay as President and Miss Margaret W. Brown as Secretary.

It was first unanimously resolved to organize a Lucas County Historical Society. Then a constitution and by-laws, which had been prepared in advance, were read for information and submitted for consideration. After careful consideration, and the adoption of some amendments, the constitution and by-laws were adopted. The constitution as adopted was brief, being intended

only for present use. The question of the incorporation of the Society was suggested, but action on this point was deferred for future consideration. The constitution and by-laws were printed in cheap pamphlet form.

The following officers were then elected for the ensuing year, namely: President, Warren S. Dungan; Vice President, Thomas Gay; Secretary, Miss Effie M. Dungan; Treasurer, Mr. B. F. Bates; Curator, Miss Margaret W. Brown; and Directors, Mr. Smith H. Mallory, Mr. R. A. Hasselquist, Mrs. F. H. Boynton, and Mrs. B. F. Vandyke. The Board of Directors was empowered to appoint a Corresponding Secretary for each township. This was afterwards changed and the organization of "auxiliary societies" in each township was provided for; and such auxiliary societies have been established, but not as yet in all of the townships.

It is made the duty of the township societies to secure, as far as possible, the history of their respective townships. Wherever we have secured officers who were interested in this matter in the townships we have secured satisfactory results. To one person is assigned the duty of writing the military history of his township; to another, the religious history; and to another, the educational history; etc. Biography has received very zealous attention. In one township the

township historian procured a large blank book and went from house to house among the older families, and thus compiled a fairly complete history of every family in his township.

Soon after our Society came into existence the two existing societies — the Old Settlers' Association and the Veteran Association — by vote became auxiliary to our Society and agreed to file with our Curator all historical matter collected by them. These organizations continue to hold annual meetings at which valuable papers are read; and these and all their collections, together with their records are turned over to our Society. Our annual meetings are sometimes held in connection with the Old Settlers' Association, and sometimes we meet alone.

While we have not yet published in book or even in pamphlet form the results of our labors, we have accumulated a large amount of most interesting historical information which, in the near future, we hope to publish in pamphlet form, as suggested in Mr. Aldrich's letter and as practised by the Jackson County Historical Society in this State.

At our June meeting in 1904 we received the following communication from the Board of Trustees of the Chariton Free Library: —

June 9, 1904.

Col. Warren S. Dungan,
Pres. Lucas Co. Historical Society:
Dear Sir:

Believing that the preservation of historical matter is of great importance in the development of our county, and that the Library should be the depository, the Trustees of the Chariton Library desire to announce that a room, in an unfinished condition, in the basement in the new Carnegie Building has been set aside for the use of the Lucas County Historical Society. In turning over the room our conditions are: that all cases containing the valuable possessions of the Society shall be locked, and that at such time as the room is not in actual use by your organization for your meetings the Library may make use of it for such purposes as may be deemed expedient by the Trustees.

Very truly
Thos. Gay, Pres., Board of Trustees.
Margaret W. Brown, Curator.

You will notice that we have a Board of Trustees which is in full sympathy with us. We have expended nearly $100 in completing and fitting up our room which, when completed, will furnish us ample accommodations for a number of years without the expense either of rent or of building.

The following are the officers of the Society at the present time: Warren S. Dungan, President; Thomas Gay, Vice President; Mrs. T. H. Boynton, Secretary and Treasurer; Miss Mar-

garet W. Brown, Curator; and Directors, Mr. T. M. Dunshee, Mr. E. Lewis, Mr. L. Curtis, Mrs. J. M. Thayer, and Miss Laura Fitch.

We find the greatest difficulty in the way of accomplishing much to be that of enlisting workers in the cause. To induce those who know the facts you want requires oft repeated solicitations. It is a labor of love, and few can be found to engage in it.

While we have not accomplished all we had hoped, we have a very considerable amount of rich historical material laid away for future use. We hope, at our next annual meeting, to take a forward step and provide for the publication, in pamphlet form, of much of the material on hand. Although the pioneer county historical society in Iowa, we have not accomplished as much as some of our sister societies. We do not, however, envy them; but with the determination of doing better in the future we bid them God's speed in the good work.

Dr. Frank E. Horack: — I have invited Mr. Wyer, Librarian of the State University of Iowa, to say a few words on the preservation of historical material in libraries.

Mr. M. G. Wyer: — I have been greatly interested in listening to the reports from the local historical societies. The hour is late, and

so I will not detain you long. I will only suggest one or two ways of making this historical material more accessible and of more use. Historical societies will naturally collect a great mass of different kinds of material, pamphlets, and reports. A great many of the pamphlets will be of different sizes. You will get photographs of streets, buildings, or of people, as well as notebooks of different lodges, societies, and organizations. After the lapse of ten years this material will be valuable and will supply information that can be had accurately from no other source. But if this great mass of material is simply left to accumulate on shelves or in corners it will be of little or no use because it is not accessible. Works which are in series may be readily gathered together; but this is not so easily done with pamphlets. One of two methods may be employed to advantage. The pamphlets may be put in boxes, made by a bookbinder for from five to twenty cents each; or they may be put into pamphlet covers which are made especially for the purpose.

The best method of preserving photographs is the loose leaf ledger system; but this method is, perhaps, too expensive for some societies. On the other hand, photographs may be put in manilla envelopes. The pasteboard covers, called "multiple binders," made by Gaylord Bros.,

Syracuse, New York, which may be had for from two to seven cents each, according to size, are found very useful in preserving pamphlets, programs, clippings, etc.

The local historical societies would do well to affiliate with the public library. These libraries are usually glad to offer room for historical collections. If placed in the public library the material becomes accessible to the people generally.

PART IV

THE AFTER-LUNCHEON PROGRAM

THE AFTER-LUNCHEON PROGRAM

[In the Dining Room of the Imperial Hotel]

President PETER A. DEY: — President MacLean has consented to act as toastmaster, and so the balance of the program will be entirely in his hands.

President GEORGE E. MACLEAN: — *Mr. President and Ladies and Gentlemen of The State Historical Society, Friends, and Governor of the State*: I count it a high privilege to welcome those who have come to join in the celebration at this historic shrine of the State — the Old Capitol and the ancient Capital City. Pilgrimages may well be made to yonder stone building. We rejoice that it is the plan of the Board of Regents of the State University to fireproof that building so that it may stand for all time as a memorial of the birthplace of the Commonwealth. We rejoice especially that The State Historical Society, in terms of the statute "under the auspices of the State University," is here to voice with us this pious spirit on the part of the University.

We are doubly glad this day that the Chief Magistrate of the State is in hearty sympathy with these relations of The State Historical So-

ciety and the State University. In the spirit of this occasion, and as if in anticipation, Governor Cummins said to the Iowa pioneers, week before last, that "the country that has no pride in its past loses one of the chief inspirations of its future. Such pride is the surest guide to the officers of the Commonwealth in the performance of their public duties. . . . After all, these laws which we find upon the Journals of the State, what a little part are they of the mandates which govern civilized society. We are held together by a higher and surer and better bond; by a civilization compounded of the consciousness and heart and mind of the people of a former time. Our feet are set toward the goal and the path has been cleared before us, and it is to the pioneers that our gratitude is due."

That the spirit of these words may be valuable it is necessary for all time that The State Historical Society should remain at the seat of the State University.

In 1857 when the constitutional convention framed our present Constitution, the General Assembly then in session organized The State Historical Society and provided that it should be "under the auspices of the State University." Those gentlemen were familiar with the expensive policy of the distribution of State institutions. After making, as far as they could, a fair

distribution, they consented to concentration where their experience showed it should exist. And they saw that the State University in its first experiment might have branches located in other places; but later it was concentrated without branches at Iowa City. They saw that economy demanded one State University for this Commonwealth; and they perceived that The State Historical Society was of more importance than a single department in the University. But they saw equally clearly that The State Historical Society should be inseparably connected with the State University since it is in some sense an academic institution — a department or college of local history. And so, auspiciously, side by side the State University and The State Historical Society have grown up together as great sister institutions. To-day we rejoice that modern history shows the soundness of the policy of the pioneers in this particular.

We discover from a *Report* made by a learned committee, appointed by the American Historical Association in 1905 (a *Report* of the Committee "On the Organization and Work on the Part of State and Local Historical Societies") that to-day the example set by Iowa is the example to be followed everywhere and is becoming the dominant practice. Two hundred and forty-four historical societies of all kinds responded

to the invitation of the Committee for information. The Committee makes the following induction: —

"Inspired, doubtless, by the example of the Wisconsin Society, which is in close, although not official, connection with the University of Wisconsin, there has recently been a strong tendency on the part of Western and Southern historical organizations to associate themselves with their State universities. At the university town, of all communities in the State, exists a body of scholars who can most profitably utilize the collections of the historical society. The scholars need the inspiration of persistent, intelligent collection and publication; the society managers need the academic atmosphere and academic counsel in and with which to broaden and solidify their work, while the historical library finds its excuse in the largest possible circle of users. Recognition of these facts has, wherever possible, led to a closer union between the society and university; but in several States, as in Missouri and Washington, where union with existing agencies seemed impracticable to the universities, the latter have secured the organization of rival State societies at their own seats."

It becomes a necessity from the standpoint of the University, that is, of a State University where students are developing patriotism by ex-

ploring American history, that The State Historical Society, or a duplication of it, be at the seat of the University. We had last year at the State University of Iowa one hundred and sixty-six students in the Graduate College. These are the ripest products of scholarship from Iowa Colleges as well as our own College of Liberal Arts. From other Colleges they resort to the University consecrated to learning. Here research and investigation are regular work; and material in the historical field most valued by the graduate student will be the material in the library of The State Historical Society. I repeat, therefore, that it is of necessity that the real University is a Graduate College. If The State Historical Society is not found at the University, it must be duplicated there as has been done in Missouri and Washington.

There are seven great historical societies situated at the seats of State Universities; and the most successful of the State Historical Societies are where they are related to the great University of the Commonwealth. The Massachusetts Historical Society is in some sense the mother of us all — an illustrious example of what an historical society should be. But observe that the Massachusetts Society is under the shadow of Harvard University. It has developed great men in history and diplomacy. By this relation

of Harvard University and the Historical Society, men like Charles Francis Adams and Albert Bushnell Hart have been developed. In the case of the University of Pennsylvania, which is not a State University, but which is the University of the Commonwealth, we have the related Pennsylvania Historical Society; and this relationship has made possible a McMaster and an Ames. Already we, too, have made promise of brightness because the State University and The State Historical Society of Iowa are training in this relationship.

It seems, if the right key-note has been sounded by your toastmaster, that the first speaker should be from the Historical Society which in the West holds the pre-eminence that the Massachusetts Society has in the East. In Wisconsin the Historical Society is affiliated with the State University, and together they are housed in the most important library building this side of Washington. From the great building in Wisconsin and the great State Historical Society of Wisconsin it gives me pleasure to introduce the Superintendent who last evening led us in romantic ways through the grand Mississippi Valley — Reuben Gold Thwaites.

Dr. Reuben Gold Thwaites: — *Mr. President, His Excellency, Ladies, and Gentlemen*: I

suppose I ought to be contented with already having had a portion of my speech delivered to you by the toastmaster. I had a hand in drafting that *Report* to which he referred. The ideas were supplied by the Committee, but the words are mine.

I always sympathize strongly with the after dinner speaker, and am reminded of the story of the little boy who, taking a look through a book of Bible stories and finding Daniel in the lions' den, asks: "Father what makes Daniel look so pleased in the lions' den?" The father replies: "He knows there is not going to be any after dinner speaking."

In Wisconsin, sir, we have had pretty much the same sort of history of our State Historical Society as you have had in Iowa; but we are a few years older. It was fifty-eight years ago this winter that the legislature organized the State Historical Society of Wisconsin. Nearly every Senator was made President. There were as many Vice Presidents as at a certain convention in our town when seventy-five men who on ordinary occasions cleaned our streets were summoned on the platform as Vice Presidents. In Wisconsin we have the Legislature, the University, and the Historical Society growing together.

I bring on this occasion of the Fiftieth Anniversary of your Society the greetings of the Wis-

consin Historical Society and also the congratulations and best wishes of the Massachusetts Historical Society and the American Antiquarian Society.

I remember that a college chum of mine said to me when I went into historical work: "Thwaites, good heavens, man! are you going to give up the lively business of newspaper editor to write up old seeds?" But it is a joy that the man outside of the work does not know. We not only gain in experience, but we often get personal pleasure. What an inspiration to be here the last thirty-six hours! In the last twenty years in the Middle West I have not been so deeply thrilled as at the meeting here! No incident pleased me more than greeting those three veterans of the three historic conventions!

In Wisconsin, sir, we had but one successful constitutional convention — the work of the earlier one was repudiated by the people — and not one man lives of the Convention of 1848. Iowa is the child of Wisconsin. I envy you, sir, that the climate enables these gentlemen to come down from the previous generation. Yours must be a better climate than we have in Wisconsin.

In Wisconsin we have a varied population. We have the old fragments of the French population of early days in Green Bay, Prairie du Chien, and other places — of the old days of the

French régime. It is my duty to gather historical material concerning these people. I will relate an experience which I once had with my helper, one Andrew Vieau — a Frenchman who helped me to gather manuscripts of the old French régime along the Fox River. There was an old woman on the Green Bay shore who was so miserly about manuscripts that she would not give them up to the Historical Society. She really thought that we ought to pay her something for them. But, sir, Historical Societies, true to their traditions, do not *pay* for manuscripts: they *acquire* them.

One day I received a postal card requesting me to come at once to visit Madam Noir. I packed my bag and went to Green Bay the next day. There I found my man Vieau sitting in the rear seat of a victoria, with a silk hat and an old faded frock coat. His feet were on the front seat, and in his mouth he held a cigar on a forty-five degree angle. "You will ruin the Historical Society", I said, "with this enormous expense." He replied: "Sir, you do not understand my people. *Monsieur*, you must know that with these French people one must make *une grande impression.*"

Well, sir, we started out, and after miles of travel over roads and through bushes we got to the cabin of the Madam and stopped. My friend

let down from the seat the carriage steps, and then led me down as though I were the Prince Napoleon. The chickens scattered away in fright. The Madam was surprised. My friend said: "This man is from the Historical Society of Wisconsin. A grand man!" After dusting two or three rickety stools she invited us to be seated. Then young Pierre was ordered to go to the cellar to get the books, which were soon placed in the carriage. As the material was brought up by the two boys, the Madam was taken by the hand and given the grand salute. Then we passed out. The Madam, with mouth wide open, looked on with astonishment while I was handed into the carriage and the door snapped to. As we turned the corner my friend touched me on the shoulder and said: "*Une grande impression*, sir!"

President George E. MacLean:— We Americans also are subject to *une grande impression.* Whenever any one comes from the seat of the National government, even in unbending Iowa, we are impressed. It gives me pleasure to introduce the Congressman who serves this district, who has helped the arts and sciences, and who is always a friend of the State University and of The State Historical Society. I introduce our loyal co-worker, Hon. A. F. Dawson.

Hon. Albert F. Dawson: — *Mr. President, Ladies, and Gentlemen*: If I could hope to make the same impression upon this audience that the Frenchman made on Mr. Thwaites's friend in Wisconsin, I would undertake with enthusiasm the task of making a few remarks.

I do want to express my thanks and appreciation of the honor of being present on this historic occasion; and it seems to me that it is peculiarly fitting that this celebration should be held here at Iowa City, the birthplace and the cradle of our splendid Commonwealth. Here on this historic spot is where the pioneers, such as are with us to-day, laid so broad and deep the foundations upon which has been reared the splendid structure of the Commonwealth of Iowa.

This celebration, marking as it does the Fiftieth Anniversary of the Constitution of the State of Iowa as well as the same Anniversary of The State Historical Society of Iowa, brings naturally to mind a survey of our splendid past and the hopes and aspirations of our still more promising future. Ours was an heritage rich beyond compare. Iowa's very position in the heart of the Republic, with a vast area of soil of unequalled fertility, made a high destiny possible. And when this State was settled by that sturdy race of empire builders, who possessed honesty, energy, self reliance, and supreme faith in a

guiding Providence, and whose hearts were filled with the love of liberty and of free institutions, then it was that the high destiny of the State of Iowa was made sure and certain.

Fifty years is a brief span in the history of a State; but that period has marked an advance in intellectual and material progress that has had no parallel in history. And to-day, if we take into view all the characteristics which make a great State — wealth, resources, education, morality, and the Christian virtues of her people — I say that in my judgment (with all due respect to the other States represented here) the State of Iowa is without a peer in the American Union to-day.

Looking backward over our brief but brilliant history we see Iowa the pioneer in bringing higher education close to the people; we see the multiplication of churches, colleges, and schools without number; we read the long roll of illustrious men who have served their State and country with high distinction; and above all, and proudest of all, we have seen our rapidly increasing population steadily and religiously following the path of right living, clean thinking, and virtuous endeavor.

In a time like this it is not only the events of the past that crowd themselves upon us; but the present-day spirit of progressiveness draws our

thoughts to the present and directs our attention to the future. It seems to me that the future of Iowa is bright with promise and is brimming with hope. Endowed with the vigor and vitality of youth, sinewed with conscious strength and irresistible energy, Iowa is marching forward with supreme and implicit confidence in her future success.

In marking progress, as at a celebration like this, it is a duty we owe to ourselves to point out the shortcomings as well as to extol the virtues of our people. With all our excellence we as a people are deficient in one trait which is a powerful factor in the upbuilding of a Commonwealth. We are deficient in what is commonly known as "State pride." This is a deficiency common to the western States. Whether it comes from a lack of years, the absence of traditions, or from the fact that the first half century of our statehood has been employed by our people in close application to material progress, I do not know. It is certainly from no lack of patriotism or love of country, as Iowa amply proved by the generous offering of her sons in times of war. We all love the State of Iowa. It is very dear to those of us who were born here, and it must be dearer still to those who come here of their own choice. We love its history, its institutions, its customs, its hills, valleys, and rolling prairies. We ad-

mire the generosity, hospitality, and geniality of this western civilization, with its freedom from cant and hypocrisy, and the absence of those social palisades which divide the people of the old world into distinct classes. And yet we do not allow our minds to dwell upon these things sufficiently to fill our hearts with that pride in our State which it so richly deserves.

We can learn a valuable lesson in this direction from the older States of the East and South. Perhaps in no State is this laudable sentiment stronger than in Virginia. With the Virginian the natural feeling of pride in one's country has become a passion, and, as one writer says, "no distance of deportation, no trimmings of gracious prosperity, and no pickling in the sharp acids of adversity can destroy it."

This spirit is strikingly illustrated by an incident, related by a clerical friend of mine at Clinton, which occurred on a recent visit to his birthplace in Virginia. It was in Judge Hundley's court. Hal Flood, an attorney in the case, after taking all night to hunt up decisions on a certain point, addressed the Court in the morning saying, "May it please your Honor, I can find no decisions of the Supreme Court of Virginia on the point, but I have here several from the Supreme Court of the United States." "Well, Mr. Flood", replied Judge Hundley, "of

course, if there are no decisions by our own courts, the next best authority is that of the United States Courts." Strange as it may seem, that remark did not cause the slightest surprise in the court room.

I hope in the near future to see this feeling of State pride become an integral part of the Iowa character. Let us speed the day when, to use the language of an ante-bellum writer of Virginia, patriotism with an Iowan will be a noun personal, when he will love Iowa *per se* and *propter se,* when he will love to talk about her, when it will make no odds where he goes he will carry Iowa with him and never get acclimated elsewhere.

It has been wisely said that the State should be the first object of our loyalty; that the loyalty we owe to the nation is most ennobled by conforming it with the loyalty one pays to the State. The two grow naturally together. High citizenship will give to one's State and country an affection second only to the love of his family and his devotion to God.

What the people of the State of Iowa need is the cultivation of this feeling of pride in our splendid State, and to fill their hearts with the thought that in matters sentimental or patriotic, moral, educational, or commercial, the splendid State of Iowa always affords the best.

This spirit will do much to increase the homogeneity of our people and will give a tremendous impetus in working out the splendid destiny which is certainly ours.

President GEORGE E. MACLEAN:—It strengthens us to hear these sound words — to learn how rapidly we are accomplishing things. When I think of ex-Congressman Wade, of Irish ancestry, I am reminded of the Irishman's boast that every man loves his native land whether he was born there or not; and when I listen to the present Congressman, of English descent, I am sure we are on the way of accomplishment. An undergraduate of Oxford University, in a heated debate, said that the British lion whether roaming in the jungles of India or climbing the pines of Canada never retires within its shell or draws in its horns.

Rejoicing always in the living present it nevertheless gives us pleasure to turn our eyes and see the glorious past. I will now introduce one of the pioneers who came to us, I understand, as a Democrat from the State of Connecticut in 1853. He helped to frame the Constitution under which we have lived so happily these fifty years. I introduce the Hon. John H. Peters, of the Convention of 1857.

Hon. John H. Peters—*Mr. President, Ladies, and Gentlemen*: I had hoped that I would not have to say anything on this occasion, and that the privilege of speaking might go to others. Indeed, since I *reformed* and quit the practice of law I have virtually lost that lawyer-like proclivity to talk at all times, on all occasions, on any subject, and on either side. Then, too, as the young lady is reported to have said, "this is so sudden." And besides there is something in this anniversary occasion that calls up such a flood of reminiscences that I can not find language to express my feeling.

Almost nothing has been said this afternoon concerning the formation of the Constitution in 1857. It is true that the labor performed on that occasion was mostly in the committee rooms; and, as was suggested this morning, it was essentially non-partisan. I could say that there was little or no politics in the discussions of the Convention of 1857. Still I am sure I was a Democrat — and I have been enjoying the same disease ever since. But there was an earnest attempt on the part of all the members to formulate a rule of action that should be the fundamental law, best suited to defend the rights of the people.

As evidence of the non-partisanship of that body I recall my relations with Governor (and afterwards Senator) Grimes — one of Iowa's

grand old men. While we differed in politics there were many occasions when we sat down together and discussed questions which to our minds were of great importance. I can recall no instance in which we were not in perfect accord except, perhaps, on the section regarding banking. The committee having that subject in charge reported a complete section which was adopted — I think by a unanimous vote. But some two weeks after the article had appeared in the newspapers a delegation of bankers from the city of New York, headed by the venerable Horace Greely, paid us a visit; and soon thereafter the banking section so unanimously adopted was reconsidered and the present section adopted upon a strict party vote.

The section of the Constitution regarding the admissibility of evidence reads: "and any party to any judicial proceedings shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses as provided by law." Shades of old Starkie! What an innovation on the rules of evidence! All old common lawyers were ready to exclaim: Horrible! Horrible! An open bid for perjury! Then there was the proposition of electing the judges by the qualified electors. On these and other

propositions I remember His Excellency and myself were in accord.

I met Senator Grimes in Washington soon after the Civil War, and in talking over old times I remarked that experience had fully satisfied me of the wisdom of the article regarding the admission of evidence, but that regarding the election of judges I was somewhat in doubt. I was of the opinion that executives would be inclined to consider partisanship rather than qualifications. In reply Senator Grimes said that the past record of Iowa did not warrant my conclusion; that while Governor Hempstead (Democrat) was Governor he appointed three judges, two of whom were Whigs; and that while he (Grimes, a Republican) was Governor he appointed five judges, three of whom were Democrats, and all were an honor to the profession.

As I look over the old capital city to-day I am at loss for language to express my feeling. I believe I can best express myself by relating a little incident that is said to have occurred "away down East." As the story goes, an old fellow residing some three or four miles out of town was in the habit every month or two of going to the village, driving a pair of oxen attached to a two-wheeled cart. After attending to his business he would invariably fill up with New England rum to a point that would just

allow him to get into the cart and start the cattle for home. On one occasion some mischievous boys met the outfit while passing through a piece of timber and brush. Taking in the situation, the lads devised a practical joke; and suiting action to the thought they drove the conveyance into a dense thicket, unhitched the cattle and sent them on their way home, leaving the old fellow sleeping in the cart, utterly oblivious to all surroundings. Soon after daylight he awoke and, looking about, was so completely dumbfounded that his personal identity was in extreme doubt. But after pulling himself together, as best he could, and getting into a sitting position he soliloquized in about this manner: "If my name is Johnson I've lost a pair of cattle; if it's not Johnson I've found a d—d good cart."

The naughty Convention of 1857 unhitched the Capital from Iowa City and sent it adrift; but there was created in its place a grand institution of learning, the State University of Iowa — an institution in my humble judgment of more importance to the good people of the grand old State of Iowa than both branches of the legislature at Des Moines.

Seriously my friends it does not seem possible that half a century has passed since the Convention of 1857 completed its work — a work that has stood the test for fifty years with only

slight amendments. A statement by some one this morning to the effect that I am the only surviving member of that body creates a sadness that I am unable to express. It seems so strange that after these long years, after four years of strenuous service in the field of war, shot at thousands of times, I am yet alive and with you here to-day. I am not an old man either, that is, when the calendar is hidden away in some forgotten recess. Well! Well! I can only say that "there's a divinity that shapes our ends rough hew them as we may."

President George E. MacLean: — It is with pleasure, Colonel Peters, that we assure you that you have not lost any oxen. And, moreover, we are glad to learn from our veteran Professor Calvin, what we ought to have known and stated before, that besides driving cattle you have ridden horses, having served as Colonel of the Sixth Iowa Cavalry.

We have already been presented to the next speaker who came to the Territory of Iowa in 1839 from the State of Ohio, which in some sense we are glad to consider as a parallel to this State. Ohio has been what we hope Iowa is about to be — the mother of Presidents. I introduce J. Scott Richman, of Muscatine, as a Whig, as a

Republican, and as a member of the Constitutional Convention of 1846.

Hon. J. Scott Richman: — *Ladies and Gentlemen*: Called upon to make a speech after eating a six to ten course luncheon, I do not care to say much; and what I do say will be in a disconnected manner.

I have heard so much in the last three or four days on different subjects that there seems to be little left to be said. It has been suggested that I give something of my personal history; but that is of no interest to anybody except myself. Nevertheless I will say that I was born in Somerset, Ohio, on the 11th day of March, 1820. My father was born in New Jersey; my mother in Pennsylvania — she was a farmer's daughter, and her maiden name was Mary Scott. They met, and loved; but when they insinuated that they wanted to get married, her father objected. They overruled his objections, eloped, and were married. The marriage was fruitful. There were born to them eight children — seven boys and one girl. One of the boys died in infancy. The others all grew to maturity and were all married and raised families but one. They have all passed into the unknown world but myself, and I am in my eighty-eighth year. Jacob Scott was the name of my grandfather. I was named

after him — hence my euphonious name, Jacob Scott Richman. Many persons called me "Jake." I did not like the abbreviation, and as soon as I learned to write I wrote my name J. Scott Richman. Now I am familiarly called Scott, or Scott Richman.

When my father died he left my mother a large fortune, namely, seven children to care for and nothing to take care of them with — just such a fortune as many Methodist preachers leave their widows. What was to be done? Friends were called in consultation, and relatives in Pennsylvania corresponded with; and it was decided that my mother should dispose of all the earthly goods with which she had been endowed and return with her children to her relatives. Accordingly, a public sale was had and after the payment of debts there was enough to pay for transportation of the family to Pennsylvania.

The trip was made from Somerset, Ohio, to Bucks County, Pennsylvania, in a two-horse, covered wagon, stopping every night at taverns where were found good lodgings and plenty to eat. The two oldest boys remained in Ohio, having obtained satisfactory employment there. So there were only five of the children who accompanied my mother on the long weary journey.

We arrived without accident, and went to the home of my grandmother Scott. My brother

Abraham and myself were placed with relatives on farms, and earned our living. We were sent to school during the three winter months of the year. As soon as I became slightly acquainted with the "three R's" I was considered sufficiently educated to become a clerk in a general store. I occupied that position for several years; and when at the age of nineteen I had become the owner of about $100 I went west to Knoxville, Illinois, where my eldest brother had settled and was in business. He received me gladly and introduced me to Curtis K. Harvey, a prominent lawyer. My brother wanted me to study law. Mr. Harvey talked with me awhile and gave me encouragement, offering to loan me the books I wanted to read. I commenced reading at once. About six months later my brother closed out his business there and removed to Muscatine, Iowa. I went with him and continued to read at odd times, though much of my time was spent as clerk in my brother's store, until Judge Williams induced me to make application for admission to the bar. I made application. I was examined by S. C. Hastings, Stephen Whicher, and David Rorer. They reported favorably and I became a member of the bar. I practised law a short time in Tipton, Cedar County, Iowa, but soon returned to Muscatine where I practised until Judge Dillon, the then Judge of the Seventh Ju-

dicial District, was elected a Judge of the Supreme Court. He resigned as District Judge, and Governor Kirkwood appointed me to fill the vacancy. I was elected at the next election, and re-elected at a succeeding election without opposition. During part of the time I was on the bench I was the sole Judge in the counties of Muscatine, Scott, Clinton, and Jackson, and labored diligently. I tried and decided many cases — some of them important and many of them unimportant. Of the quality of my work I have nothing to say.

Perhaps something about the early jurists in the Territory of Iowa would be of interest.

First, I shall refer to Judge Charles Mason, who was a grand man — a solid man. His is the first name to be found in *Cases Argued and Determined in the Supreme Court of the Territory of Iowa.* Of one hundred and eighty cases, Judge Mason wrote opinions in one hundred and forty. He had two associates — Joseph Williams and Thomas S. Wilson. Judge Williams gave five opinions and Wilson twenty-five. Judges Williams and Wilson were said to be excellent for consultation and suggestion in considering cases, but neither would write an opinion if he could avoid it.

Judge Williams was the most genial man I ever met. To get an order from him it was nec-

essary for you to write it yourself and fully explain it. He did not like to write, although he wrote an excellent hand. He was ready to make a speech on almost any subject; but temperance was his favorite theme. He was a good lawyer. How he got his legal learning nobody knows. He must have obtained it by absorption. He had a wonderful memory and seemingly never forgot anything he heard, saw, or read. He was prominent in this country from the organization of the Territory in 1838. He was familiar with the law and practice in Pennsylvania and found it necessary to read the statutes of Iowa and to study the changes made by every newly elected legislature. In social gatherings he was looked to as an entertainer. He sang with great skill, always placing the emphasis in the right place. He uttered his sentences in such a way as to make himself a favorite on the stump as an orator. Nor was there a kinder man living. If he had only five dollars and you needed it in emergency he would gladly loan it to you.

We have heard much of the rising of the State of Iowa from the "waste of waters" that once covered it; that as it emerged it was kissed by the sun and impregnated with life and light which enabled it to clothe itself in its own habiliments of grass and flowers of every hue, and with trees pointing out to man each stream and rivulet

where he might quench his thirst or cleanse his body. Even the air is different from other air. For our earliest court decided, and its opinion was announced by Judge Mason, that the slave that came within our borders — and breathed the pure air that blows across its prairies — became at once and thereby a free man.

But I have said enough. I am very much pleased with my reception here. I wish to assure you all that I appreciate it.

President GEORGE E. MACLEAN: — As we listen to these our beloved pioneers we come to the climax in the last of the three to be introduced. He is a Democrat of the sturdy kind, who came to Iowa from Indiana, the State of William Henry Harrison and Benjamin Harrison. He was a member of the Constitutional Convention of 1844, and he came to the Territory in 1840 — Colonel Samuel W. Durham.

Hon. SAMUEL W. DURHAM: —*Mr. President, Ladies and Gentlemen of The State Historical Society of Iowa*: It gives me great pleasure, after spending two-thirds of a century within thirty miles of this place, to report to you at the end of this fiftieth year since our present State Constitution was formed. We meet to renew the memories of the past, to profit by its lessons, and to give proper credit and honor to those who con-

trolled public affairs in that early period of our State's history, and especially to that body of men who framed our present Constitution.

They were chosen from the common pursuits of life and were fair specimens of honesty and intelligence; and they had had experience, more or less, in affairs of public concern. They did not consider themselves as possessed of superior wisdom, nor as the equals of Moses and Solon as law makers. They thought they knew what the people wanted, and honestly and ably performed the trust assigned them.

There were men in that Convention who were eminent in State affairs — men whose heads reached as near the clouds both mentally and physically as any that the State then produced. One of them, Judge Hall, of Burlington, served in the Convention of 1844. Their proceedings were conducted with order and dignity. Some pretty radical changes were made from the provisions of the Constitution of 1846 — perhaps for the better. At any rate, no move has ever been made for a new Constitution. Those men are now all gone except my friend Col. Peters, who sits by my side, now as then an honored citizen of Manchester. Their life work is done: their bodies repose in everlasting peace.

I visited the Convention of 1857 one day during its session, and was escorted by my friend

Colonel Trowbridge, the Sergeant-at-Arms, to a seat on the floor with the members, and I witnessed some of the proceedings. Horace Greely was there at the same time, and in the evening I heard him make a public address. I had an introduction to him. He gave me a cordial handshake; but he did not say: "I am delighted to see you."

The member from Linn County, Hosea W. Gray, is not here to speak for himself. He came from Pennsylvania and settled in Marion in 1839. He was Sheriff, Clerk of the District Court, and Captain in the Sixth Iowa Regiment, and a man of affairs generally. After the war he moved to Nebraska. His remains now lie under Nebraska sod. The vernal winds chant requiems over his grave. The winter of 1856-57 was the coldest I had then or have since seen in Iowa.

Of the thirty-five men in the Constitutional Convention of 1857, I knew about one-third; and several of them I knew intimately. I knew all the early Governors from Lucas down to Grimes — particularly Lucas, Hempstead, and Lowe. I tried my hand at constitution making in 1844, and was then familiar with State affairs. But I was mostly attracted to the public surveying business, surveying and mapping a large extent of country in different parts of Iowa and some in Wisconsin, the most interesting of which was the

District in which the city of Des Moines is now located.

Whether my time has been well spent or not, I leave for my fellows to determine. When one is done acting his part in life I deem that the most desirable thing that can be written on his tombstone is: "Here lies the body of an honest man." And now, while nearing the close of a long life,

Of't in the stilly night, e'er slumber's chain hath bound me,
Fond memory brings the light of other days around me.

And

I feel like one who treads alone, a banquet hall deserted.
Whose music's hushed, whose guests are gone,
And all but me departed.

President GEORGE E. MACLEAN: — None of us can appropriately reply to the venerable pioneer, Colonel Durham, whose words come to us as a benediction from old Iowa. There is one person among us whom we honor as our grandest citizen, one who laid the foundation and aided in the completion of Iowa's present Capitol at Des Moines. He laid its foundations from stone taken from the quarries at Iowa City — the same as was used in the Old Capitol. I ask those present to rise and thus honor and return thanks to these three pioneers, while I ask that our grand citizen, Peter A. Dey, say a word in our behalf.

Mr. Peter A. Dey: — I was once in the Capitol of the United States (in the Senate Chamber) with A. J. Poppleton, an eminent lawyer of Nebraska. He said to me while looking down over that august body: "Those gentlemen there think they are governing this country." I looked at him with considerable astonishment and said: "You say they *think* they are! Aren't they doing it?" He replied: "No sir!" "Then who is governing this country?" I enquired. Pointing to the reporters he said: "Those gentlemen with pencils behind their ears govern this country."

I may have had something to do with the erection of the Capitol of Iowa. I understand that the Governor does not like the Capitol; but I do. We honestly differ; but I have not had the opportunity to hold the Governor's chair. This, however, is clear: I had a little something to do with the Capitol at Des Moines. But I have had very little to do with The State Historical Society of Iowa. If you want to know what has caused the growth of the Society and brought it into importance in recent years, go to Mr. Shambaugh's office and you will soon learn all about it.

President George E. MacLean: — At this point I am sure we all feel like the Scotchman at a long drawn out feast in Scotland. We have

had four days of feasting of soul and we are still being feasted. The Scotchman, towards the close of the feast, was so full of whisky that when they said to him, "have another glass," he said, "I am full up to my ears, but since it is whisky pour it on my head." We will now hear from one of a later generation who is interested in Iowa history — one who teaches it not only in the school that trains teachers, but proclaims it in his books throughout the length and breadth of Iowa. We have Professor L. W. Parish with us to pour whisky on our heads.

Professor L. W. PARISH: — *Mr. President, the Governor, Ladies, and Gentlemen*: Coming from the quiet routine of class work in our little city of Cedar Falls, where we seldom think of the extravagance of banquets, but are contented when we get our three meals a day, you can imagine my dismay at being called upon to join this retinue of after dinner speakers. It has not been my habit to get help from whisky, but I feel that I need help of some kind. My condition reminds me of the Irish lad who went to Dublin University for examinations. He was given a passage to translate. The passage was that familiar one from Virgil: *Obstupui steteruntque comae et vox faucibus haesit;* and he translated in the way they used to: *Obstupui,*

shure, I was sore amazed, *Steteruntque comae et,* and my hair stood on end like the bristles on a pig's back, *vox faucibus haesit,* my voice stuck in my throat and nary a word could I spake, your Honor.

As one of the non-resident Curators, a sort of outside member of The State Historical Society, I would like to express my feelings in regard to this great work. In spite of my very large confidence in the committee that had the arrangements in charge, I had some wonder as to whether the affairs of such an occasion as this would receive proper appreciation and recognition in this center of learning. Now, I want to say that I have been amazed and delighted at the appreciative audiences that have greeted our speakers from the universities beyond the Mississippi River. The addresses have been such as to stimulate, uplift, and enlighten all of us.

I was greatly pleased with the Conference of representatives of the local historical societies of this State. I rejoiced to see the interest, the enthusiasm, and patriotism which they brought to this celebration, and to realize the work they are now beginning and which will grow as the years go by until we shall see the accumulations of documents, books, and relics, which will help those of future days to know how we aborigines lived away back in 1907.

I wish my mathematics and my physiology would warrant the hope that I might live to be at the *next* great celebration of the Constitution of Iowa under the auspices of The State Historical Society.

President George E. MacLean: — The toastmaster is reminded at this point of another Scotchman who went to a dinner in a great house in Scotland. In this great house he was told that there was plenty of drink and that every man must be prepared to take every drink with every course and carry it well. He remained at the table throughout the dinner, finding it possible to spill the superfluous drink under the table. He found, at the close of the feast, that only a few remained in their chairs, the majority of the company being under the table. He thought that the time had come when he, too, should slip under the table. He did so. At that moment some one pitched upon him. He cried: "You thief! what are you about?" The person replied: "I am only the boy, undoing your neckcloth so that you will not strangle." I feel that I am the boy undoing the neckcloth. I feel that the professor from Harvard will think that I am the thief. But I shall do my duty, nevertheless, and I shall call him out because he was once a member of our faculty of Law. Now, however, he

comes from our most ancient seat of learning. We must have a benediction from Harvard through Professor Eugene Wambaugh.

Professor EUGENE WAMBAUGH: — In the seal of Harvard stands the word *Veritas* — an assurance that between the ideals of that university and the ideals of other universities there is no difference whatever. There was an identity in the ideals of the universities of the Middle Ages, as any one can ascertain by searching for the early use of the word university or of its mediæval equivalent *studium generale.* A university, according to the mediæval theory, does not mean an institution that teaches everything; but it means an institution with a world wide view, an institution that welcomes students from all parts of the world, an institution that sends teachers to all parts of the world. In other words, geographical breadth of view is historically an essential feature of every university. In the light of that conception, it is obviously natural that a university should take interest in an important commemoration a thousand miles away.

No doubt every one of us realizes that this Iowa celebration is not of merely local interest; but the scope of it did not fully reveal itself to me until I happened to open this little book

which has been so kindly given to each of us as a souvenir. On the outside you see, "The Constitution of Iowa, 1857-1907"; but if you will open the volume and read almost any passage in the instrument, you will find that the instrument is more than it purports to be, for your thoughts will be carried far away from Iowa, and far back of 1857, and far beyond 1907. In the Bill of Rights, for example, one reads that "political power is inherent in the people." The members of the Convention of 1857 did well to embody that statement in the Constitution; but the doctrine can be traced back two thousand years to the forests of Germany. This little book is the outgrowth of the past. It is also seed for the future. We are celebrating an instrument connected with all time past and to come. Further, the importance of the event which we are commemorating does not wholly belong to this place. Great as Iowa is, its greatness consists chiefly in its position as a part of a still greater nation. Throughout the whole United States the Constitutions are substantially alike; and thus we are in effect commemorating and commending all American Constitutions, including the greatest of all, the Constitution of the United States.

The Constitution of Iowa, then, represents the whole nation, and the past and the present — and the future as far as we can see. Yes, it is

not too much to say that the event we celebrate, the adoption of the Iowa Constitution of 1857, is one of the series of steps vastly important to America and to the whole world, prophetic of great events still unrevealed; for the system of government represented by this Constitution is simply one example of that system which, as far as experiment has shown, is the best whereby men can be governed — the system by which they have the power and the duty to govern themselves.

President George E. MacLean: — We will cheerfully consider what Professor Wambaugh says in the light of the scriptural passage that into Abraham's bosom were gathered from the north and from the south, from the east and from the west to this Iowa (otherwise Paradise). And we rejoice that as in Paradise the different generations were united in joy, so, too, the generations are united in Iowa. We have with us the grandson of the first Governor of the Territory of Iowa, and he bears the name of his grandfather. I call upon Robert Lucas, a native of this classic city of Iowa.

Mr. Robert Lucas: — *Mr. President, Ladies, and Gentlemen*: The hour is late and I do not wish to detain you by extended remarks. If I were to offer any sentiment it would be to our

forebears, the Iowa pioneers. To them do we not owe every sentiment of gratitude and esteem, for from what they have planted has grown (as Mr. Dawson has said) a Commonwealth, rich beyond compare in wealth — not unstable or inflated, that is, not dissipated by financial change or speculation, but a wealth that is rooted in the soil and flourishing in the atmosphere which the Almighty has given us.

We have a State where the wealth is more equally distributed than in any other community on earth. There are few rich men and very few poor men. We have a State where the average morality is as high as in any community on earth. The average intelligence is equal to any. We have institutions that are admirable. We have tribunals that are respected everywhere. We have nearly every kind of legitimate business; we have industries, active and flourishing. We have an historic record of a glorious people on the field of battle and of achievements on the field of civic endeavor, of which every Hawkeye, native or adopted, should be justly proud. We have the hope of continued prosperity, of future benefits to be conferred upon our fellow men. These things we owe to the strenuous efforts, the wisdom, and the foresight of the Iowa pioneers. I thank you.

President GEORGE E. MACLEAN: — From our first Governor to our last and, I will tell the truth, our best Governor — Governor Cummins.

Governor ALBERT B. CUMMINS:—*Mr. Toastmaster, Ladies, and Gentlemen*: I have for many years been storing up that pride in our Commonwealth of which your Congressman has spoken so graphically; and I have begun to believe that Iowa not only touches the climax of civilization, but is marching in the forefront of progress. Referring to the remarks of my distinguished friend from Wisconsin, who related that delightful incident of the *grande impression,* I desire to say that in this State we still call such a procedure *grand larceny.*

Dr. REUBEN GOLD THWAITES: — It cost me ten dollars the next day.

Governor ALBERT B. CUMMINS: — I intend to take on new courage. Possibly with the aid of the energy which I know exists in our humble Commonwealth we may in time reach the point that Wisconsin has safely passed. I answer my kind friend from Wisconsin who, looking over the tables at these strong, vigorous, and venerable men of eighty years of age, wonders about the air of Iowa, that there is no other State in the Union that can produce men of this char-

acter and carry them to the century mark with their faculties unimpaired.

In regard now to the history of this State: I am told that it is recorded somewhere that when the Creator of the universe had completed his mighty work and was surveying it, He looked a little more tenderly and lovingly on the spot called Iowa than upon any other spot upon which the sun shone, and He gave to our atmosphere a vigor denied to that of other States. In speaking of Iowa I sometimes hesitate to recapitulate its wonderful resources and capacities — materially, morally, politically, or in any other way mortal man is accustomed to display his energy.

I take this opportunity to welcome the visitors from other States. You have done us distinguished honor by coming here. Your presence has made still more significant this celebration of the Anniversary of our Constitution.

My young friends (eighty-years young) I hope that you may live fifty years more and come back and celebrate the centennial of the adoption of the Constitution of Iowa. We will all be here to meet and greet you. I, too, desire with my friend Mr. Lucas, the descendant of a great man, to renew my pledge to the memory of the pioneers. We are not entitled to very much credit for it; but it was a mighty good fortune for Iowa that her early settlers came from those regions

in which intelligence is admired and righteousness is practiced. It was the coming together of those currents from Ohio, Pennsylvania, New England, and the South in a common spirit to make this Commonwealth ideal, that gave Iowa the impulse and direction which she can never lose. I agree with Mr. Dawson that the Iowa heart is as full of pride as the heart of any Virginian or Missourian, or the heart of any man who has the misfortune to live anywhere else. We are great in our State Historical Society; great in our State University; and when it comes to Iowa City it seems to me that about all there is of Iowa is Iowa City — it somehow seems to encompass the whole horizon.

Last year we raised in the State four hundred million bushels of corn; we raised nine million hogs (four legged ones); and all other things in good proportion. The Lord endowed this State with agricultural conditions unlike those of any other State.

Something which you wrote, Professor Calvin, or something which I have read somewhere gave me the impression that Iowa, or some part of Iowa, was the first bit of ground that appeared above the chaotic waters in ancient times — that the first bit of ground on which the sun ever shone in the North American Continent lies in the State of Iowa. It must have been in Alla-

makee County that the first ground came up out of the waters. It did me good to think that Providence saved this rich fertile soil to be inhabited by our own men and women; and I hope that Professor Calvin will not take from me this impression of the antiquity of Iowa. I know you can prove anything by Geology. You may as well prove our title to antiquity as anything.

We all hope that Iowa will keep pace in the march of progress; that she will do her share in the work that is to be done; and that when the future rewards are distributed it will be found that Iowa is entitled to the recognition that comes to faithful hearts and persistent hands.

President George E. MacLean: — In closing it behooves us to thank The State Historical Society for its present contributions to the history of Iowa and for the promise of future contributions. Thanks are due to the committee who organized this celebration — to Professor Weld, Mr. Rich, and Professor Shambaugh. I shall ask Professor Shambaugh, the Editor of the publications of The State Historical Society to pronounce the benediction.

Professor Benj. F. Shambaugh: — *Mr. President, his Excellency the Governor, Ladies*

and Gentlemen: The hour is late; and yet I am convinced that we are very near the dawn. The realization of the dream of the renaissance of The State Historical Society of Iowa is at hand. The meeting to-day closes the program of the week — a program in which there was no clap-trap and in which there was no attempt to cater to the popular demand. Throughout the week there has been maintained an interest in local history and in the work of The State Historical Society through a program elevated to the very highest plane of scholarship. To be able to do this has been the dream of the renaissance of The State Historical Society of Iowa.

President George E. Maclean: — We conclude then with: — Long live The State Historical Society of Iowa; and God save the Commonwealth of Iowa and its Governor.

APPENDIX A

THE CONSTITUTION OF 1857

THE CONSTITUTION OF IOWA
1857-1907 [1]

HISTORICAL INTRODUCTION

Iowa was the sixteenth Commonwealth to be admitted into the Union on an equal footing with the original thirteen States. The date of admission was December twenty-eighth, one thousand eight hundred and forty-six — seventy years after the Declaration of Independence.

As a part of the Province of Louisiana, the Iowa country was acquired by the United States in 1803. Thus the purchase of Louisiana may be regarded as a starting point in the history of Iowa. In 1804 the Iowa country was included in the District of Louisiana. In 1805 the District of Louisiana was organized as the Territory of Louisiana. Then in 1812 the Territory of Louisiana was reorganized as the Territory of Missouri. That part of the Territory of Missouri now embraced within the limits of the State of Missouri was admitted into the Union in 1821. Thereupon the Iowa country was left without a local constitutional status until 1834, when it was attached to and made a part of the Territory of Michigan. In 1836 it became a part of the newly organized Territory of Wis-

[1] The *Constitution of Iowa 1857-1907* as here given is printed from the souvenir pocket edition which was issued in March, 1907, at the time of the Fiftieth Anniversary of the Constitution of Iowa.

consin. Two years later (1838) the independent Territory of Iowa was established on the fourth day of July.

The Iowa country was explored by Marquette in 1673, by Lewis and Clarke in 1804, by Zebulon M. Pike in 1805, and by Albert M. Lea in 1835. Marquette explored the valley of the Iowa river; the Lewis and Clarke expedition passed through western Iowa; Pike explored the west bank of the Mississippi; and Albert M. Lea explored eastern Iowa.

In 1836 Albert M. Lea published a book entitled *Notes on Wisconsin Territory with a Map.* On the map and in the text he referred to the country west of the Mississippi as the "Iowa District." Iowa, he tells us, was a name suggested to him by the Ioway River. Thus the name "Iowa" descended from "Ioway River" through the "Iowa District" and the "Territory of Iowa" to the "State of Iowa."

The permanent settlement of Iowa dates from the early thirties, the Indian title to a portion of the country having been first extinguished in June, 1833. A series of treaties made within a period of ten years secured from the Indians practically the whole of the Iowa country.

The population grew by leaps and bounds. Men came here from all parts of the Union. They came from the North, the South, the East, and the Middle West. The increase in the population up to 1846 was as follows: 10,531 in 1836; 22,859 in 1838; 43,112 in 1840; and 102,388 in 1846.

Many of the early settlers came to Iowa before the lands had been surveyed and offered for sale. They did not wait for the surveyor and the auctioneer. They staked out "claims" and proceeded to improve them. They built houses and barns and fences; they broke the prairies and cleared the forests. For their mutual protection in making and holding claims they formed "claim associations" and "land clubs." The constitutions, laws, and resolutions of these extra-legal associations were for the pioneers the "law of the land."

The Constitution of the Territory of Iowa was the "act to divide the Territory of Wisconsin and to establish the Territorial Government of Iowa," passed by Congress in 1838. It served as the fundamental law until the formation of the State government in 1846.

The movement toward the establishment of State government was inaugurated by Governor Lucas who, in 1839, recommended that the Legislative Assembly memorialize Congress for permission to form a constitution. This first recommendation bore no fruit. But in 1840 the question of calling a constitutional convention was submitted to the people. It was voted down by a large majority. Again in 1842 the people opposed the calling of a convention by a decisive vote. It was not until 1844 that a vote was returned by the people in favor of State Government.

The first constitutional convention met at Iowa City in October, 1844. It consisted of seventy-two members — fifty-one Democrats and twenty-one Whigs. The Consti-

tution drawn up by this convention was twice submitted to the people in 1845, and twice rejected by them.

The second constitutional convention met at Iowa City in May, 1846. It consisted of but thirty-two members — twenty-two Democrats and ten Whigs. On August 3, 1846, the Constitution drafted by this convention was ratified by the people by a majority of 456 votes. With this Constitution as the fundamental law Iowa was admitted into the Union on December 28, 1846.

As early as 1855 the General Assembly of the State provided for an expression of the people relative to the calling of a convention to revise or amend the Constitution of 1846. The majority in favor of such a convention was over eighteen thousand. In November, 1856, delegates were elected; and in January, 1857, the third constitutional convention met at Iowa City. It was composed of thirty-six members — twenty-one Republicans and fifteen Democrats.

The Constitution drawn up by the convention of 1857, a copy of which is herein printed from the original records,[1] was ratified by the people in August, 1857, by a majority of 1630 votes. It went into effect September, 1857, upon the proclamation of Governor James W. Grimes.

At four different times since its adoption the Constitution of 1857 has been amended. These several amendments are given below following the text of the Constitution.

In 1882 the following proposed amendment was ratified by the people as Section 26 of the Bill of Rights: "No

[1] *Cf.* Pamphlet edition issued by the Secretary of State in 1893.

person shall manufacture for sale, or sell or keep for sale, as a beverage, any intoxicating liquors whatever, including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof." But in 1883 the Supreme Court held, in the case of Koehler & Lange *vs.* Hill, that owing to certain irregularities this amendment had not been legally submitted to the people and therefore did not become a part of the Constitution.

The first effort to provide for biennial elections met with a similar fate. A proposed amendment ratified by the people in 1900 as Section 16 of Article XII was held unconstitutional by the Supreme Court in the case of State ex. rel. Bailey *vs.* Brookhart. Substantially the same amendment was, however, adopted in 1904 and declared valid by the Supreme Court.

CONSTITUTION OF IOWA AS ADOPTED IN 1857

We, the people of the State of Iowa, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of the State of Missouri — as established by the constitution of that State — adopted June 12th, 1820 — crosses the said middle of the main channel of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty-three degrees and thirty minutes North latitude; thence East along said parallel of forty-three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

ARTICLE I

BILL OF RIGHTS

SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights — among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

SEC. 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

SEC. 4. No religious test shall be required as a qualification for any office, or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

SEC. 5. Any citizen of this State who may hereafter be engaged, either directly, or indirectly, in a duel, either as principal, or accessory before the fact, shall forever be

disqualified from holding any office under the Constitution and laws of this State.

SEC. 6. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

SEC. 7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

SEC. 8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

SEC. 9. The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

SEC. 10. In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compul-

sory process for his witnesses; and, to have the assistance of counsel.

SEC. 11. All offenses less than felony and in which the punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace, or other officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment by a grand jury, except in cases arising in the army, or navy, or in the militia, when in actual service, in time of war or public danger.

SEC. 12. No person shall after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable, by sufficient sureties, except for capital offenses where the proof is evident, or the presumption great.

SEC. 13. The writ of habeas corpus shall not be suspended, or refused when application is made as required by law, unless in case of rebellion, or invasion the public safety may require it.

SEC. 14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

SEC. 15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

SEC. 16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 17. Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted.

SEC. 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

SEC. 19. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 20. The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives and to petition for a redress of grievances.

SEC. 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 22. Foreigners who are, or may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and descent of property, as native born citizens.

SEC. 23. There shall be no slavery in this State; nor shall there be involuntary servitude, unless for the punishment of crime.

SEC. 24. No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years.

SEC. 25. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

ARTICLE II

RIGHT OF SUFFRAGE

SECTION 1. Every white[1] male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State six months next preceding the election, and of the County in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform military duty on the day of election, except in time of war, or public danger.

SEC. 4. No person in the military, naval, or marine service of the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place, or station within this State.

SEC. 5. No idiot, or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.

SEC. 6. All elections by the people shall be by ballot.[2]

ARTICLE III

OF THE DISTRIBUTION OF POWERS

SECTION 1. The powers of the government of Iowa shall be divided into three separate departments — the Legislative, the Executive, and the Judicial; and no person

[1] See below, Amendments of 1868.

[2] See below, Amendments of 1884.

charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT

SECTION 1. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives; and the style of every law shall be, "Be it enacted by the General Assembly of the State of Iowa."

SEC. 2. The sessions of the General Assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members; unless the Governor of the State shall, in the meantime, convene the General Assembly by proclamation.

SEC. 3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their repsective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.[1]

SEC. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a free white[2] male citizen of the United States, and shall have been an inhabitant of this State one year next preceding his election, and at the time of his election shall have had an actual residence of sixty

[1] See below, Amendments of 1884.

[2] See below, Amendment of 1880.

days in the County, or District he may have been chosen to represent.

SEC. 5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

SEC. 6. The number of Senators shall not be less than one-third, nor more than one-half the Representative body; and shall be so classified by lot, that one class, being as nearly one half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.

SEC. 7. Each house shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

SEC. 8. A majority of each house shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

SEC. 9. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

SEC. 10. Every member of the General Assembly shall have the liberty to dissent from, or protest against any act or resolution which he may think injurious to the public,

or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

SEC. 11. Senators and Representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

SEC. 12. When vacancies occur in either house, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

SEC. 13. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 15. Bills may originate in either house, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

SEC. 16. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon their journal, and proceed to re-consider it; if, after such re-consideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted,

the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return. Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof.

SEC. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

SEC. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

SEC. 19. The House of Representatives shall have the sole power of impeachment and all impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

SEC. 20. The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors and malfeas-

ance in office, in such manner as the General Assembly may provide.

SEC. 21. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

SEC. 22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to hold a seat in the General Assembly; but offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

SEC. 23. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either House of the General Assembly, or be eligible to hold any office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

SEC. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

SEC. 25. Each member of the first General Assembly under this Constitution, shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled, in going to and returning from the place where such session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have power to increase the compensation of its own members. And when convened in extra session they shall

receive the same mileage and per diem compensation, as fixed by law for the regular session, and none other.

SEC. 26. No law of the General Assembly, passed at a regular session, of a public nature, shall take effect until the fourth day of July next after the passage thereof. Laws passed at a special session, shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

SEC. 27. No divorce shall be granted by the General Assembly.

SEC. 28. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

SEC. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

SEC. 30. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, County, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

SEC. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

SEC. 32. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

SEC. 33. The General Assembly shall, in the years One thousand eight hundred and fifty nine, One thousand eight hundred and sixty three, One thousand eight hundred and sixty five, One thousand eight hundred and sixty seven, One thousand eight hundred and sixty nine, and One thousand eight hundred and seventy five, and every ten years

thereafter, cause an enumeration to be made of all the white [1] inhabitants of the State.

SEC. 34. The number of senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties, according to the number of white [2] inhabitants in each. [3]

SEC. 35. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State, according to the number of white [4] inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law, one half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed. [5]

SEC. 36. At its first session under this Constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative. [6]

[1] See below, Amendments of 1868.
[2] See below, Amendments of 1868.
[3] See below, Amendments of 1904.
[4] See below, Amendments of 1868.
[5] See below, Amendments of 1904.
[6] See below, Amendments of 1904.

SEC. 37. When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

SEC. 38. In all elections by the General Assembly, the members thereof shall vote viva voce and the votes shall be entered on the journal.

ARTICLE IV

EXECUTIVE DEPARTMENT

SECTION 1. The Supreme Executive power of this State shall be vested in a Chief Magistrate who shall be styled the Governor of the State of Iowa.

SEC. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office two years from the time of his installation, and until his successor is elected and qualified.

SEC. 3. There shall be a Lieutenant Governor, who shall hold his office two years, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 4. The persons respectively having the highest number of votes for Governor and Lieutenant Governor,

shall be declared duly elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of said persons Governor or Lieutenant Governor, as the case may be.

SEC. 5. Contested elections for Governor or Lieutenant Governor, shall be determined by the General Assembly in such manner as may be prescribed by law.

SEC. 6. No person shall be eligible to the office of Governor, or Lieutenant Governor, who shall not have been a citizen of the United States, and a resident of the State, two years next preceding the election, and attained the age of thirty years at the time of said election.

SEC. 7. The Governor shall be commander-in-chief of the militia, the army, and navy of this State.

SEC. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

SEC. 9. He shall take care that the laws are faithfully executed.

SEC. 10. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

SEC. 11. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

SEC. 12. He shall communicate, by message, to the General Assembly, at every regular session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 13. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next General Assembly.

SEC. 14. No person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided.

SEC. 15. The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The Lieutenant Governor, while acting as Governor, shall receive the same pay as provided for Governor; and while presiding in the Senate, shall receive as compensation therefor, the same mileage and double the per diem pay provided for a Senator, and none other.

SEC. 16. The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and

forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reason therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

SEC. 18. The Lieutenant Governor shall be President of the Senate, but shall only vote when the Senate is equally divided; and in case of his absence or impeachment, or when he shall exercise the office of Governor, the Senate shall choose a President pro tempore.

SEC. 19. If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

SEC. 20. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially and shall be called the Great Seal of the State of Iowa.

SEC. 21. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 22. A Secretary of State, Auditor of State, and Treasurer of State, shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified; and perform such duties as may be required by law.

ARTICLE V

JUDICIAL DEPARTMENT

SECTION 1. The Judicial power shall be vested in a Supreme Court, District Courts, and such other Courts, inferior to the Supreme Court, as the General Assembly may, from time to time, establish.

SEC. 2. The Supreme Court shall consist of three Judges, two of whom shall constitute a quorum to hold Court.

SEC. 3. The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their Court at such time and place as the General Assembly may prescribe. The Judges of the Supreme Court so elected, shall be classified so that one Judge shall go out of office every two years; and the Judge holding the shortest term of office under such classification, shall be Chief Justice of the Court, during his term, and so on in rotation. After the expiration of their terms of office, under such classification, the term of each Judge of the Supreme Court shall be six years, and until his successor shall have been elected and qualified. The Judges of the Supreme Court shall be ineligible to any other office in the State, during the term for which they shall have been elected.

SEC. 4. The Supreme Court shall have appellate jurisdiction only in cases in chancery, and shall constitute a Court for the correction of errors at law, under such re-

strictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior Judicial tribunals throughout the State.

SEC. 5. The District Court shall consist of a single Judge, who shall be elected by the qualified electors of the District in which he resides. The Judge of the District Court shall hold his office for the term of four years, and until his successor shall have been elected and qualified; and shall be ineligible to any other office, except that of Judge of the Supreme Court, during the term for which he was elected.

SEC. 6. The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

SEC. 7. The Judges of the Supreme and District Courts shall be conservators of the peace throughout the State.

SEC. 8. The style of all process shall be, "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.

SEC. 9. The salary of each Judge of the Supreme Court shall be two thousand dollars per annum; and that of each District Judge, one thousand six hundred dollars per annum, until the year Eighteen hundred and Sixty; after which time, they shall severally receive such compensation as the General Assembly may, by law, prescribe; which compensation shall not be increased or diminished during the term for which they shall have been elected.

SEC. 10. The State shall be divided into eleven Judicial Districts; and after the year Eighteen hundred and sixty, the General Assembly may reorganize the Judicial Districts and increase or diminish the number of Districts, or the number of Judges of the said Court, and may increase the number of Judges of the Supreme Court; but such increase or diminution shall not be more than one District, or one Judge of either Court, at any one session; and no re-organization of the districts, or diminution of the number of Judges, shall have the effect of removing a Judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of Judges, shall take place every four years thereafter, if necessary, and at no other time.[1]

SEC. 11. The Judges of the Supreme and District Courts shall be chosen at the general election; and the term of office of each Judge shall commence on the first day of January next, after his election.

SEC. 12. The General Assembly shall provide, by law, for the election of an Attorney General by the people, whose term of office shall be two years, and until his successor shall have been elected and qualified.

SEC. 13. The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor shall have been elected and qualified.[2]

SEC. 14. It shall be the duty of the General Assembly to provide for the carrying into effect of this article, and to

[1] See below, Amendments of 1884.

[2] See below, Amendments of 1884.

provide for a general system of practice in all the Courts of this State.[1]

ARTICLE VI

MILITIA

SECTION 1. The militia of this State shall be composed of all able-bodied white[2] male citizens, between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States, or of this State, and shall be armed, equipped, and trained, as the General Assembly may provide by law.

SEC. 2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do military duty in time of peace; provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

SEC. 3. All commissioned officers of the militia, (staff officers excepted), shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE VII

STATE DEBTS

SECTION 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

SEC. 2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not

[1] See below, Amendments of 1884.

[2] See below, Amendments of 1868.

otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

SEC. 3. All losses to the permanent, School, or University fund of this State, which shall have been occasioned by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent. annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

SEC. 4. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

SEC. 5. Except the debts hereinbefore specified in this article, no debt shall be hereafter contracted by, or on behalf of this State, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years

from the time of the contracting thereof; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt created thereby; and such law shall be published in at least one newspaper in each County, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

Sec. 6. The Legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability, which may have been contracted in pursuance thereof, shall remain in force and be irrepealable, and be annually collected, until the principal and interest are fully paid.

Sec. 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

ARTICLE VIII

CORPORATIONS

Section 1. No corporation shall be created by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

Sec. 2. The property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals.

SEC. 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the state.

SEC. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly.

SEC. 5. No act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election.

SEC. 6. Subject to the provisions of the foregoing section, the General Assembly may also provide for the establishment of a State Bank with branches.

SEC. 7. If a State Bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each other's liabilities upon all notes, bills, and other issues intended for circulation as money.

SEC. 8. If a general Banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of State, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in United States stocks, or in interest paying stocks of states in good credit and standing, to be rated at ten per cent. below their average value in the City of New York, for the thirty days next preceding their deposit; and in case of a depreciation

of any portion of said stocks, to the amount of ten per cent. on the dollar, the bank or banks owning such stock shall be required to make up said deficiency by depositing additional stocks; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.

SEC. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held for all of its liabilities, accruing while he or she remains such stockholder.

SEC. 10. In case of the insolvency of any banking institution, the bill-holders shall have a preference over its other creditors.

SEC. 11. The suspension of specie payments by banking institutions shall never be permitted or sanctioned.

SEC. 12. Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

ARTICLE IX

EDUCATION AND SCHOOL LANDS

1st. Education

SECTION 1. The educational interest of the State including Common Schools and other educational institutions, shall be under the management of a Board of

Education, which shall consist of the Lieutenant Governor, who shall be the presiding officer of the Board, and have the casting vote in case of a tie, and one member to be elected from each judicial district in the State.

SEC. 2. No person shall be eligible as a member of said Board who shall not have attained the age of twenty-five years, and shall have been one year a citizen of the State.

SEC. 3. One member of said Board shall be chosen by the qualified electors of each district, and shall hold the office for the term of four years, and until his successor is elected and qualified. After the first election under this Constitution, the Board shall be divided, as nearly as practicable, into two equal classes, and the seats of the first class shall be vacated after the expiration of two years; and one half of the Board shall be chosen every two years thereafter.

SEC. 4. The first session of the Board of Education shall be held at the Seat of Government, on the first Monday of December, after their election; after which the General Assembly may fix the time and place of meeting.

SEC. 5. The session of the Board shall be limited to twenty days, and but one session shall be held in any one year, except upon extraordinary occasions, when, upon the recommendation of two thirds of the Board, the Governor may order a special session.

SEC. 6. The Board of Education shall appoint a Secretary, who shall be the executive officer of the Board, and perform such duties as may be imposed upon him by the Board, and the laws of the state. They shall keep a journal of their proceedings, which shall be published and distributed in the same manner as the journals of the General Assembly.

SEC. 7. All rules and regulations made by the Board shall be published and distributed to the several Counties, Townships, and School Districts, as may be provided for by the Board, and when so made, published and distributed, they shall have the force and effect of law.

SEC. 8. The Board of Education shall have full power and authority to legislate and make all needful rules and regulations in relation to Common Schools, and other educational institutions, that are instituted, to receive aid from the School or University fund of this state; but all acts, rules, and regulations of said Board may be altered, amended or repealed by the General Assembly; and when so altered, amended, or repealed they shall not be re-enacted by the Board of Education.

SEC. 9. The Governor of the State shall be, *ex-officio*, a member of said Board.

SEC. 10. The Board shall have no power to levy taxes, or make appropriations of money. Their contingent expenses shall be provided for by the General Assembly.

SEC. 11. The State University shall be established at one place without branches at any other place, and the University fund shall be applied to that Institution and no other.

SEC. 12. The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools, and such schools shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.

SEC. 13. The members of the Board of Education shall each receive the same per diem during the time of their

session, and mileage going to and returning therefrom, as members of the General Assembly.

SEC. 14. A majority of the Board shall constitute a quorum for the transaction of business; but no rule, regulation, or law, for the government of Common Schools or other educational institutions, shall pass without the concurrence of a majority of all the members of the Board, which shall be expressed by the yeas and nays on the final passage. The style of all acts of the Board shall be, "Be it enacted by the Board of Education of the State of Iowa."

SEC. 15. At any time after the year One thousand eight hundred and sixty three, the General Assembly shall have power to abolish or reorganize said Board of Education, and provide for the educational interest of the State in any other manner that to them shall seem best and proper.

2nd. School Funds and School Lands

SECTION 1. The educational and school funds and lands, shall be under the control and management of the General Assembly of this state.

SEC. 2. The University lands, and the proceeds thereof, and all monies belonging to said fund shall be a permanent fund for the sole use of the State University. The interest arising from the same shall be annually appropriated for the support and benefit of said University.

SEC. 3. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, for the support of schools, which may have been, or shall hereafter be sold, or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress, distributing the

proceeds of the public lands among the several States of the Union, approved in the year of our Lord one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as has been or may hereafter be granted by Congress, on the sale of lands in this State, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of Common Schools throughout the State.

Sec. 4. The money which may have been or shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, shall be exclusively applied, in the several Counties in which such money is paid, or fine collected, among the several school districts of said Counties, in proportion to the number of youths subject to enumeration in such districts, to the support of Common Schools, or the establishment of libraries, as the Board of Education shall, from time to time provide.

Sec. 5. The General Assembly shall take measures for the protection, improvement, or other disposition of such lands as have been, or may hereafter be reserved, or granted by the United States, or any person or persons, to this State, for the use of the University, and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be, and remain, a permanent fund, the interest of which shall be applied to the support of said University, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty

of the General Assembly as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

SEC. 6. The financial agents of the school fund shall be the same, that by law, receive and control the State and county revenue for other civil purposes, under such regulations as may be provided by law.

SEC. 7. The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths, between the ages of five and twenty-one years, in such manner as may be provided by the General Assembly.

ARTICLE X

AMENDMENTS TO THE CONSTITUTION

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either House of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors

qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become a part of the Constitution of this State.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

SEC. 3. At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.

ARTICLE XI

MISCELLANEOUS

SECTION 1. The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery, and cases where the question of title to real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding three hundred dollars.

SEC. 2. No new County shall be hereafter created containing less than four hundred and thirty-two square miles; nor shall the territory of any organized county be reduced

below that area; except the County of Worth, and the counties west of it, along the Northern boundary of this State, may be organized without additional territory.

SEC. 3. No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation — to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness.

SEC. 4. The boundaries of the State may be enlarged, with the consent of Congress and the General Assembly.

SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.

SEC. 6. In all cases of elections to fill vacancies in office occurring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office, shall hold until the next general election, and until their successors are elected and qualified.

SEC. 7. The General Assembly shall not locate any of the public lands, which have been, or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres.

SEC. 8. The seat of Government is hereby permanently established, as now fixed by law, at the City of Des Moines, in the County of Polk; and the State University at Iowa City, in the County of Johnson.

ARTICLE XII

SCHEDULE

SECTION 1. This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect.

SEC. 2. All laws now in force and not inconsistent with this Constitution, shall remain in force until they shall expire or be repealed.

SEC. 3. All indictments, prosecutions, suits, pleas, plaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offenses, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution, shall be subject to indictment, trial, and punishment, in the same manner as they would have been, had not this Constitution been made.

SEC. 4. All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any County therein, or to the school fund, shall inure to the State, county, or school fund, in the manner prescribed by law.

SEC. 5. All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

SEC. 6. The first election under this Constitution shall be held on the second Tuesday in October, in the year One thousand eight hundred and fifty seven, at which time the electors of the State shall elect the Governor and Lieutenant Governor. There shall also be elected at such election,

the successors of such State Senators as were elected at the August election, in the year One thousand eight hundred and fifty-four, and members of the House of Representatives, who shall be elected in accordance with the act of apportionment, enacted at the session of the General Assembly which commenced on the first Monday of December, One thousand eight hundred and fifty-six.

SEC. 7. The first election for Secretary, Auditor, and Treasurer of State, Attorney General, District Judges, Members of the Board of Education, District Attorneys, Members of Congress and such State officers as shall be elected at the April election, in the year One thousand eight hundred and fifty-seven, (except the Superintendent of Public Instruction,) and such county officers as were elected at the August election, in the year One thousand eight hundred and fifty-six, except Prosecuting Attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight: *Provided,* That the time for which any District Judge or other State or County officer elected at the April election in the year One thousand eight hundred and fifty-eight, shall not extend beyond the time fixed for filling like offices at the October election in the year one thousand eight hundred and fifty-eight.

SEC. 8. The first election for Judges of the Supreme Court, and such County officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year One thousand eight hundred and fifty-nine.

SEC. 9. The first regular session of the General Assembly shall be held in the year One thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one thousand eight hundred and fifty-nine, at which time their successors shall be elected as may be prescribed by law.

SEC. 11. Every person elected by popular vote, by vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed, to any such office, before the taking effect of this Constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been or may be elected or appointed shall expire; but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office, in this Constitution prescribed.

SEC. 12. The General Assembly, at the first session under this Constitution, shall district the State into eleven Judicial Districts, for District Court purposes; and shall also provide for the apportionment of the members of the General Assembly, in accordance with the provisions of this Constitution.

SEC. 13. This Constitution shall be submitted to the electors of the State at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this State. The ballots at such election shall be written or printed as follows: Those in favor of the Constitution, "New Constitution — Yes." Those against the Constitution, "New Constitution — No." The election shall be conducted in the same manner as the general elections of the State, and the poll-books shall be

returned and canvassed as provided in the twenty-fifth chapter of the Code, and abstracts shall be forwarded to the Secretary of State, which abstracts shall be canvassed in the manner provided for the canvass of State officers. And if it shall appear that a majority of all the votes cast at such election for and against this Constitution are in favor of the same, the Governor shall immediately issue his proclamation stating that fact, and such Constitution shall be the Constitution of the State of Iowa, and shall take effect from and after the publication of said proclamation.

SEC. 14. At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "white" from the article on the Right of Suffrage, shall be separately submitted to the electors of this State for adoption or rejection in the manner following — Namely: A separate ballot may be given by every person having a right to vote at said election, to be deposited in a separate box; And those given for the adoption of such proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? Yes." And those given against the proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? No." And if at said election the number of ballots cast in favor of said proposition shall be equal to a majority of those cast for and against this Constitution, then said word "White" shall be stricken from said Article and be no part thereof.[1]

SEC. 15. Until otherwise directed by law, the County

[1] This proposition was voted down by a large majority.

of Mills shall be in and a part of the sixth Judicial District of this State.

[SEC. 16.] [1]

Done in Convention at Iowa City, this fifth day of March in the year of our Lord One thousand eight hundred and fifty-seven, and of the Independence of the United States of America, the eighty-first.

In testimony whereof we have hereunto subscribed our names.

Timothy Day
S. G. Winchester
David Bunker
D. P. Palmer
Geo. W. Ells
J. C. Hall
John H. Peters
Wm. H. Warren
H. W. Gray
Robt. Gower
H. D. Gibson
Thomas Seely
A. H. Marvin
J. A. Parvin
W. Penn Clarke
Jeremiah Hollingsworth
Wm. Patterson
J. H. Emerson
R. L. B. Clarke
James A. Young
H. D. Solomon
M. W. Robinson
Lewis Todhunter
John Edwards
J. C. Traer
James F. Wilson
Amos Harris
Jno. T. Clark
S. Ayres
Harvey J. Skiff
D. W. Price
Alpheus Scott
George Gillaspy
Edward Johnston
Aylett R. Cotton

FRANCIS SPRINGER,
President

Attest; — TH: J. SAUNDERS, Secretary
E. N. BATES, Asst. Secretary

[1] See below, Amendments of 1904.

PROCLAMATION

WHEREAS an instrument known as the "New Constitution of the State of Iowa" adopted by the constitutional convention of said State on the fifth day of March A. D. 1857 was submitted to the qualified electors of said State at the annual election held on Monday the third day of August 1857 for their approval or rejection.

And whereas an official canvass of the votes cast at said election shows that there were Forty thousand three hundred and eleven votes cast for the adoption of said Constitution and Thirty eight thousand six hundred and eighty-one votes were cast against its adoption, leaving a majority of sixteen hundred and thirty votes in favor of its adoption.

Now therefore I, JAMES W. GRIMES, Governor of said State, by virtue of the authority conferred upon me, hereby declare the said New Constitution to be adopted, and declare it to be the supreme law of the State of Iowa.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Iowa.

L. S. Done at Iowa City this Third day of September A. D. 1857 of the Independence of the United States the eighty second and of the State of Iowa the eleventh. JAMES W. GRIMES

By the Governor,

ELIJAH SELLS,

Secretary of State.

AMENDMENTS OF 1868

1st. Strike the word "White" from section 1 of article 2 thereof;

2d. Strike the word "White" from section 33 of article 3 thereof;

3d. Strike the word "White" from section 34 of article 3 thereof;

4th. Strike the word "White" from section 35 of article 3 thereof;

5th. Strike the word "White" from section 1 of article 6 thereof.

AMENDMENT OF 1880

Strike out the words "free white," from the third line of section four (4) of article three (3) of said constitution, relating to the legislative department.

AMENDMENTS OF 1884

Amendment 1. The general election for state, district, county and township officers, shall be held on the Tuesday next after the first Monday in November.[1]

Amendment 2. At any regular session of the general assembly the state may be divided into the necessary judicial districts for district court purposes, or the said districts may be reorganized and the number of the districts and the judges of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.

Amendment 3. The grand jury may consist of any number of members, not less than five, nor more than fifteen, as the general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury.

[1] See below, Amendments of 1904.

AMENDMENT 4. That section 13 of article 5 of the constitution be stricken therefrom, and the following adopted as such section.

SECTION 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and who shall hold his office for two years, and until his successor shall have been elected and qualified.

AMENDMENTS OF 1904

Add as section 16, to article 12 of the constitution, the following:

SEC. 16. The first general election after the adoption of this amendment shall be held on the Tuesday next after the first Monday in November in the year one thousand nine hundred and six, and general elections shall be held bienially thereafter. In the year one thousand nine hundred and six there shall be elected a governor, lieutenant-governor, secretary of state, auditor of state, treasurer of state, attorney general, two judges of the supreme court, the successors of the judges of the district court whose terms of office expire on December 31st, one thousand nine hundred and six, state senators who would otherwise be chosen in the year one thousand nine hundred and five, and members of the house of representatives. The terms of office of the judges of the supreme court which would otherwise expire on December 31st, in odd numbered years, and all other elective state, county and township officers whose terms of office would otherwise expire in January in the year one thousand nine hundred and six, and members of the general assembly whose successors would otherwise be chosen at the general election in the year one

thousand nine hundred and five, are hereby extended one year and until their successors are elected and qualified. The terms of offices of senators whose successors would otherwise be chosen in the year one thousand nine hundred and seven are hereby extended one year and until their successors are elected and qualified. The general assembly shall make such changes in the law governing the time of election and term of office of all other elective officers as shall be necessary to make the time of their election and terms of office conform to this amendment, and shall provide which of the judges of the supreme court shall serve as chief justice. The general assembly shall meet in regular session on the second Monday in January, in the year one thousand nine hundred and six, and also on the second Monday in January in the year one thousand nine hundred and seven, and biennially thereafter.

That section thirty-four (34), thirty-five (35) and thirty-six (36) of article three (3) of the constitution of the state of Iowa, be repealed and the following be adopted in lieu thereof:

SECTION 34. The senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census.

SEC. 35. The house of representatives shall consist of not more than one hundred and eight members. The ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each

county shall constitute one representative district and be entitled to one representative, but each county having a population in excess of the ratio number, as herein provided of three fifths or more of such ratio number shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.

SEC. 36. The general assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as hereinbefore required.

APPENDIX B

A BRIEF HISTORY OF THE STATE HISTORICAL SOCIETY OF IOWA

1857 - 1907

A BRIEF HISTORY OF THE STATE HISTORICAL SOCIETY OF IOWA[1]

There are times and circumstances which seem to inspire a larger interest in matters historical — times especially when the human mind cherishes what has been, times when the past touches the human imagination even to sympathy. The discovery of new scientific truths, for example, provokes curiosity in the history of scientific truth discovery; the elevation of men to high positions of trust, honor, or power among their fellows stimulates biography; while a people aroused by formative events, dramatic episodes, or by anniversaries to a consciousness of change, progress, or political unity, invariably turn with no little pride to the annals of their social and political evolution.

In our own Commonwealth of Iowa the revision of the Constitution in 1857 seems to have been the event which occasioned the first formal expression of the conviction that the history of this State was worthy of preservation. And yet this conviction itself had surely been born of earlier days. That it had been maturing gradually for more than two decades was natural and could hardly have been otherwise. The courageous pioneers, who in the thirties and forties of the last century crossed half a continent to make permanent homes in Iowa, must have realized as they blazed their names on primæval oaks or drove their stakes deep into the prairie land that their

[1] This *Brief History of the State Historical Society of Iowa* is printed from the souvenir pamphlet of the same title as issued in February, 1907, in commemoration of the Fiftieth Anniversary of the founding of The State Historical Society of Iowa.—See above p. 26.

lives were indeed part of a great movement which would some day become truly historic.

Many rare and inspiring experiences were in store for those who crossed the Mississippi prior to 1857. The beauties of nature untouched were theirs; and theirs, too, was the freedom of opportunity. During the lifetime of a single generation the pioneers beheld the evolution of a community of men and women from a few simple families to a complex society; and as participants in that social and political transformation they successfully established and maintained law and order on the frontier. These early settlers founded social and political institutions. They participated in the organization and administration of the highest form of Territorial government which the genius of our people has yet devised. Earnestly they mingled their labors with the virgin soil of the richest prairies of all America. Beneath their eyes a thousand hills were stripped of forests and more than a million acres of prairie land were turned into corn fields. The hardships and privations which they endured remain largely untold.

During the early forties the pioneers took part in an agitation for a State government. In 1845 they twice rejected the boundaries prescribed by Congress. In 1846 they formed the Constitution under the provisions of which Iowa was organized as a State and admitted into the Union. Having witnessed the birth of "the only free child of the Missouri Compromise," these Iowa pioneers enthusiastically applauded their Governor when in 1854 he declared that it was fitting that this State of Iowa should let the world know "that she values the blessings which that Compromise has secured her, and that she will never consent to become a party to the nationalization of slavery." In 1856 they made preparations for a third

constitutional convention and witnessed the birth of the political party which, with but one exception, has dominated the politics of the State even unto this day. Finally, in the eventful year of 1857 they were seriously engaged in drafting anew their code of fundamental law.

Many of the pioneers had now passed middle life. With axes and plows they had bravely fought the battles of the frontier; and now they had begun to enjoy some of the fruits of victory. They loved to tell the story of "the early days." At the fireside they lived over and over again the history of their lives. The hardships and privations through which they had passed were now endeared to them. They were proud of the great Commonwealth which they had founded. The marvelous transformations which they had witnessed stirred their imaginations. They felt that somehow their own humble lives were really a part of history; and so they resolved "to rescue from oblivion the memory of the early pioneers." Thrice fathers — fathers of the Frontier, fathers of the Territory, fathers of the State — the unschooled pioneers of Iowa now became the fathers of our local provincial history.

It was in January, 1857, while the Third Constitutional Convention was revising the Constitution of the State in the Old Stone Capitol at Iowa City, that the Sixth General Assembly, which was then in session in the same historic building, voted a permanent annual appropriation "for the benefit of a State Historical Society."[1]

To be sure, discussion of the importance and value of such a society had preceded and in a way called forth

[1] By a vote of the Board of Curators on March 3, 1857, "the present members of the Constitutional Convention and the General Assembly were elected members of the Society."

this action of the General Assembly; but the movement was not fully organized until February 7, 1857, when a Constitution for the "State Historical Society of Iowa" was adopted. The provisions of this simple instrument have continued to be the basis of the organization of the Society for half a century.

According to the original Constitution of 1857, the State Historical Society of Iowa consisted of members who were admitted upon election by the Society, or by the board of Curators, and the payment of an "admittance fee" of three dollars. The members of the Society held regular annual meetings at which officers were elected and new members admitted.

The officers of the Society consisted of "a President, six Vice Presidents, a Corresponding Secretary, a Recording Secretary, a Treasurer, Librarian, and eighteen Curators," who were chosen annually. Article seven of the Constitution constituted the Curators "the Executive Department of this Association" with "full power to manage its affairs." In April, 1869, a series of "By-Laws" was adopted, which, among other things, provided for officers and monthly meetings of the Board of Curators, fixed the quorum thereof, prescribed an order of business, and named the standing committees.

After the lapse of nearly half a century it is interesting to observe the aims and functions of this Historical Society as indicated in chapter III of the Constitution of 1857. This chapter, which is entitled "Object," reads as follows: "The object of this Society shall be to collect, embody, arrange and preserve in authentic form, a library of books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary and other materials illustrative of the history of Iowa; to rescue from oblivion the memory of its early pioneers; to obtain and preserve narratives of their

exploits, perils and hardy adventures; to secure facts and statements relative to the history, genius, progress or decay of our Indian tribes, to exhibit faithfully the antiquities, and the past and present resources of the State; and to promote the study of history by lectures, and diffuse and publish information relating to the description and history of Iowa."

At the outset the State seems to have had no direct control over the organization and administration of the Society. As time went on, however, the feeling arose that the State Historical Society of Iowa should be brought into closer relations with the State. This was certainly a legitimate demand since the Society existed for public purposes and was supported by State appropriations. Accordingly, the Fourteenth General Assembly passed "An Act to Reorganize the State Historical Society," which was approved April 23, 1872.

The act of 1872 was for the most part a compilation of the provisions of the Constitution and By-laws which the Society had already adopted. Some significant changes were, however, introduced. The Curators were thereafter to hold office for two years, and nine of the eighteen were to be appointed by the Governor of the State. The annual meeting of the Society was to be held "on the Monday preceding the last Wednesday in June of each year." Section five empowered the Board of Curators to "choose annually, or oftener, if need be, a corresponding secretary, recording secretary, a treasurer, and a librarian . . . from the members outside of their own number." These officers were to serve as officers of both the Society and the Board of Curators. A President was likewise chosen by the Curators, but from their own number. He presumably held the same office in the Society. It was further

provided by this act that "No officer of the Society or of the Board shall receive any compensation from the State appropriation to the Society."

Whatever may have been its political and legal status prior to 1872, it is certain that by the act of April 23d of that year the State Historical Society of Iowa was made a *State institution* in the fullest sense of the term. Since 1872 no change of any importance has been made in the organic law of the Society; so that today the Code provisions are substantially those of the act of 1872.

It can hardly be said that the State Historical Society of Iowa was, in its earlier years, liberally supported by the State. The idea seems to have prevailed that the library and collection would somehow grow by voluntary contributions, and that with little or no expense the materials of history would find their way to the store-rooms of the Society. By the act of January, 1857, the sum of $250 was appropriated as a permanent annual allowance. In 1860 the annual allowance was increased to $500. Twenty years later it was fixed at $1000. In 1902 the permanent annual support of the Society was raised to $2500. And finally in 1904 it was placed at $7500. In the meantime several special appropriations were voted for the benefit of the Society. The first special appropriation was made in 1868, when in "An Act in relation to the State Historical Society," $3000 annually for two years was appropriated. In 1892 a second special appropriation of $1000 for the biennial period was voted. Again in 1900 the Society received a special appropriation of $2000. The last of the special appropriations was made in 1902 and amounted to $9500.

In the original act of appropriation, as well as in subsequent statute and code provisions, the State Historical Society is referred to as "in connection with and

under the auspices of the State University." Precisely what was to be understood by these words was not clearly defined. The expression, however, has never been interpreted to mean that any organic connection existed between the two institutions. The State Historical Society of Iowa remains to this day an independent State institution, whose organization, support, and management are in no way connected with the State University. It is probable that the provisions of the act of 1857 aimed to secure the permanent location of the Society at Iowa City, where it would "be fostered by the literary and scientific influences of the University." The only material assistance which has ever been rendered by the University consisted of providing rooms for the Society from 1857 to 1868 and again from 1901 to this day.[1]

Although Iowa City, the historic capital of Iowa and the seat of the State University has been the most fitting location for the State Historical Society, the library and collections of this Society have not always had satisfactory accommodations. At first rooms in the Old Stone Capitol were assigned by the Trustees of the University. These quarters were occupied by the Society until September, 1862, when other rooms were assigned in the "Mechanics Academy." This building was occupied by the Historical Society until March, 1865. It was at this time that the

[1] At a meeting of the Board of Curators in 1866, Colonel S. C. Trowbridge said that "he [Trowbridge] was at the first organization of this Society, which was born after the politicians had swapped off all the public institutions that had been located at Iowa City, and arranged for their removal to other parts of the State, and the object of placing the Historical Society under the auspices of the University was to insure its permanent location at this point. " . . . If allowed to remain here it will be fostered by the literary and scientific influences of the University." — *From the Records of the Board of Curators, March 2, 1866.*

Trustees of the University passed a resolution authorizing the Society to use "the Library Room and Cabinet of the University for their purposes as a Society, with leave to hold the annual meetings of the Society in the University Chapel." This arrangement proved unfortunate in that it gave rise to misunderstanding, controversy, and no little ill feeling between the two State institutions.

In June, 1866, the Trustees of the University "*Resolved,* That the Historical Society be requested, so soon as they can, to surrender the government of the Society to the Trustees of the State University, and after thorough examination, if they consider that they have not sufficient authority to do so, that they petition the Legislature for such authority; and in the meantime, as a condition of occupying a room in the University, that they employ as their Librarian the Librarian of the University, and on failure to comply with this condition by the first day of September, 1866, the Executive Committee are hereby authorized and empowered to have the effects of the Historical Society removed from the University building at the expense of the University." The Curators of the Historical Society believing the performance on their part of such an act would be clearly a violation of their oath of office did not comply with the request of the Trustees.

Again in June, 1867, the Trustees of the University after a further consideration of the relation of the Historical Society to the University, passed this resolution: "*Resolved,* That the State Historical Society be permitted, until otherwise ordered, to occupy the present library-room, upon the removal of the present library of the University therefrom, which occupancy shall only be upon the following conditions: The said State Historical Society shall at their first annual meeting adopt the following: 1. The

property in the custody of the State Historical Society shall be, and remain, under the ultimate control of the Board of Trustees of the State University, and in case said Board deem it for the security or preservation of said property to assume such control they may do so. 2. That said property in the custody of the Society shall not be removed from the University Buildings, except by the consent of the said Board of Trustees. 3. That at each regular annual session of said Board of Trustees, the said Historical Society shall report to the Board the conditions and operations of the Society generally. 4. That regulations shall at all times exist by which the instructors and pupils of the State University shall have access to the collections of the Society for the proper uses of the University. 5. That at the coming session of the Legislature, the General Assembly be requested to declare and define a permanent connection to exist, as above contemplated, between the State University and the State Historical Society. 6. That the immediate management of the operations of the State Historical Society be left to the Society itself."

Again the Curators declared that they could not, "in view of their obligations to the Historical Society and the laws of the State under whose authority they are acting," accept rooms in the University on the conditions proposed by the Trustees. When they met in August the Curators rejected *seriatim* and by unanimous vote all of the conditions of the resolution. A few months later the Curators submitted to the Governor their regular biennial report, in which, after adverting to the relations then existing between the Society and the University, they made the following appeal to the General Assembly:

"It is therefore earnestly desired by the Society, that the true intent and meaning of the relation intended by the

Legislature, as expressed in the words 'auspices,' in the law referred to, may be clearly set forth.

"If a *bona fide* relationship is therein intended, we ask that the Trustees of that Institution shall be instructed to provide an appropriate and permanent place for the use of the Society, and that they may be taught to regard it as having a claim upon the protection and aid of the State, through, and derivable from, the appropriations made to the State University.

"On the contrary, if there is no tangible link of connection, then we respectfully request that an appropriation for the purpose of procuring and fitting up a room for the Society, be made direct to it, to be disbursed by some authorized responsible party." The only direct and evident result of this appeal was the special appropriation of 1868, which enabled the Society to secure and fit up for its special uses rooms outside of the University buildings.

In June, 1868, the Curators leased the "Old Stone Church" on Burlington Street, and soon thereafter the association of the State Historical Society with the State University was completely severed. In the meantime the Society had fortified its independence still further by securing articles of incorporation. The historical library remained in the damp musty basement of the "Old Stone Church" until the fall of 1882, when it was removed to better quarters in a building on Washington Street. In September, 1901, the library and collections of the Society were finally transferred from the Washington Street building to the Hall of Liberal Arts on the campus of the State University.

From the provisions of its Constitution it is clear that the publication as well as the collection and preservation of the materials of history is one of the principal objects for which the State Historical Society of Iowa

was established. The various publications which have been issued since 1857 may be grouped under four heads.

First, the official biennial reports which have appeared regularly every two years since the organization of the Society in 1857.

Secondly, the quarterly publications, of which there have been three series, namely:

The Annals of Iowa.

The Iowa Historical Record.

The Iowa Journal of History and Politics.

The first number of *The Annals* appeared in January, 1863. Thereafter the quarterly numbers were issued regularly until December, 1874, when the series was suspended for want of funds. *The Annals* complete consists of twelve volumes. In January, 1885, the first number of *The Iowa Historical Record* was issued. This was "the resumption in fact of *The Annals of Iowa.*" Of *The Iowa Historical Record* series there are eighteen volumes. The last number bears the date of October, 1902. The first number of *The Iowa Journal* bears the date of January, 1903. Four volumes of this series have thus far been issued.

Thirdly, the miscellaneous publications, of which the most important are:

Documentary Material Relating to the History of Iowa (3 vols.)

Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846, along with Press Comments and Other Materials on the Constitutions of 1844 and 1846.

The Messages and Proclamations of the Governors of Iowa (7 vols.)

The Executive Journal of Iowa, 1838-1841.

The Robert Lucas Journal of the War of 1812.

Robert Lucas: A Biography.

The Constitution and Records of the Claim Association of Johnson County, (Iowa).

The Constitution of Iowa (pocket edition).

Iowa City, a Contribution to the Early History of Iowa.

Amish Mennonites in Iowa.

Iowa Historical Lectures, 1892.

Iowa Historical Lectures, 1894.

But more inspiring than statutes, appropriations, or publications are the names of the men who as officers and members have been connected with the Society during the past half century. At the head of the list stands the name of James Wilson Grimes. As the first President, both of the Society and of the Board of Curators, Grimes was indeed a worthy predecessor of such men as Ralph P. Lowe, Samuel J. Kirkwood, William G. Hammond, George G. Wright, Josiah L. Pickard, and Peter A. Dey.

Among the Vice-Presidents of the Society were men of the same high character and public renown, as witness the names of James Harlan, Charles Mason, Thomas S. Wilson, William M. Stone, John F. Dillon, Lucien H. Langworthy, John P. Irish, and William B. Allison.

In the long line of Curators one meets the names of J. B. Grinnell, Thomas H. Benton, Jr., T. S. Parvin, G. W. McCleary, P. M. Cassady, Charles Negus, Silas Totten, Wm. Penn Clarke, James Wilson, J. F. Duncombe, John A. Kasson, D. N. Richardson, and Geo. D. Perkins.

The roll of members is longer and somewhat more provincial. But even here one finds the names of George Bancroft, Jared Sparks, William Cullen Bryant, William H. Prescott, Horace Greeley, and Theodore Parker.

Such are the historical beginnings of the State His-

torical Society of Iowa as founded and fostered by the pioneers. Without, perhaps, much knowledge of critical history and without academic training they sowed the seeds of a local provincial history which have grown and matured into ripened grain. To gather the harvest and withal to sift the grain is the duty of the present hour.

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